

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

Securities Act  
(R.S.Q., c. V-1.1, s. 331.1, par. 6 and 16)

1. The title of National Instrument 81-102 Mutual Funds is replaced with the following:  
“Regulation 81-102 Mutual Funds”.
2. Section 1.1 of the National Instrument is amended
  - (1) by replacing the definition of "approved credit rating organization" with the following:  
““approved credit rating organization" means Dominion Bond Rating Service Limited, Fitch Ratings, Moody's Investors Service, Standard & Poor's and any of their respective successors;”;
  - (2) by replacing the words “Schedule I or II” with the words “Schedule I, II or III” in paragraph (e) of the definition of “permitted gold certificate”;
  - (3) by replacing the definition of “guaranteed mortgage” with the following:  
““guaranteed mortgage" means a mortgage fully and unconditionally guaranteed, or insured, by the government of Canada, by the government of a jurisdiction or by an agency of any of those governments or by an insurer authorized to offer its services to the public in Canada as an insurer of mortgages;”;
  - (4) by inserting the following after the definition of “underlying market exposure”:  
““RSP clone fund" means a mutual fund that has adopted fundamental investment objectives to link its performance to the performance of another mutual fund whose securities constitute foreign property for registered plans and to ensure that the securities of the mutual fund will not constitute foreign property under the Income Tax Act, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.);”;
  - (5) by adding the following after paragraph (b) of the definition of “synthetic cash”:  
“(c) a long position in securities of an issuer and a short position in a standardized future of which the underlying interest is securities of that issuer, if the ratio between the value of the securities of that issuer and the position in the standardized future is such that, for any change in the value of one, a change of similar magnitude occurs in the value of the other;”;
  - (6) by replacing the definition of “approved credit rating” with the following:  
““approved credit rating" means, for a security or instrument, a rating at or above one of the rating categories set out in the table hereinbelow issued by an approved credit rating organization for that security or instrument or a category that replaces the rating category set out in the table hereinbelow if
    - (a) there has been no announcement by the approved credit rating organization of which the mutual fund or its manager is or, after having taken reasonable measures, should be aware that the rating of the security or instrument to which

the approved credit rating was given may be down-graded to a rating category that would not be an approved credit rating, and

- (b) no approved credit rating organization has rated the security or instrument in a rating category that is not an approved credit rating:

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

- (7) by replacing the definition of "mutual fund conflict of interest investment restrictions" with the following:

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

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

**3. Section 2.1 of the National Instrument is amended**

- (1) by replacing subsection (2) with the following:

"(2) Subsection (1) does not apply to a purchase of a government security, a security issued by a clearing corporation, a security issued by another mutual fund to which this Regulation and Regulation 81-101 apply, or a security of another mutual fund that is an index participation unit.";

- (2) by replacing subsection (5) with the following:

"(5) Despite subsection (1), an index mutual fund, the name of which includes the word "index", may, in order to satisfy its fundamental investment objectives, purchase a security, enter into a specified derivatives transaction or purchase index participation units if its simplified prospectus contains the disclosure

referred to in subsection (5) of Item 6 and subsection (5) of Item 9 of Part B of Form 81-101F1 Contents of Simplified Prospectus.”;

and

- (3) by deleting subsections (6) and (7).
4. Section 2.2 of the National Instrument is amended by inserting the following after subsection (1):

“(1.1) Subsection (1) does not apply to the purchase of a security issued by another mutual fund to which this Regulation and Regulation 81-101 apply, or a security of another mutual fund that is an index participation unit.”.
5. The National Instrument is amended by replacing section 2.5 with the following:

“2.5 Investments in Other Mutual Funds

  - (1) For the purposes of this section, a mutual fund is considered to be holding a security of another mutual fund if it is maintaining a position in a specified derivative for which the underlying interest is a security of the other mutual fund.
  - (2) A mutual fund that wishes to purchase and hold securities of another mutual fund may do so only if
    - (a) the other mutual fund is subject to this Regulation and Regulation 81-101;
    - (b) at the time of the purchase of that security, the other mutual fund holds no more than 10% of the market value of its net assets in securities of other mutual funds;
    - (c) both the securities of the mutual fund and the securities of the other mutual fund are qualified for distribution in the local jurisdiction;
    - (d) no management fees or incentive fees are payable by the mutual fund that, to a reasonable person, would duplicate a fee payable by the other mutual fund for the same service;
    - (e) no sales fees or redemption fees are payable by the mutual fund in relation to its purchases or redemptions of the securities of the other mutual fund if the other mutual fund is managed by the manager or an affiliate or associate of the manager of the mutual fund; and
    - (f) no sales fees or redemption fees are payable by the mutual fund in relation to its purchases or redemptions of securities of the other mutual fund that, to a reasonable person, would duplicate a fee payable by an investor in the mutual fund.
  - (3) Paragraphs (2)(a) and (c) do not apply if the security is
    - (a) an index participation unit issued by a mutual fund; or
    - (b) issued by another mutual fund established with the approval of the government of a foreign jurisdiction and the only means by which the foreign jurisdiction permits investment in the securities of issuers of that foreign jurisdiction is through that type of mutual fund.

- (4) Paragraph (2)(b) does not apply if the other mutual fund
    - (a) is an RSP clone fund; or
    - (b) purchases or holds securities
      - (i) of a money market fund; or
      - (ii) that are index participation units issued by a mutual fund.
  - (5) Paragraph (2)(f) does not apply to brokerage fees incurred for the purchase or sale of an index participation unit issued by a mutual fund.
  - (6) A mutual fund that holds securities of another mutual fund that is managed by the same manager or an affiliate or associate of the manager
    - (a) shall not vote any of those securities; and
    - (b) may, if the manager so chooses, arrange for all of the securities it holds of the other mutual fund to be voted by the beneficial holders of securities of the mutual fund.
  - (7) The mutual fund conflict of interest investment restrictions and the mutual fund conflict of interest reporting requirements do not apply to a mutual fund which purchases or holds securities of another mutual fund, if the purchase or transaction is made in accordance with this section.”.
6. Section 2.17 of the National Instrument is amended by adding the following after subsection (2):
- “(3) Paragraph (1)(b) does not apply if each simplified prospectus of the mutual fund since its inception contains the disclosure referred to in paragraph (1)(a).”.
7. Section 5.1 of the National Instrument is amended by replacing paragraph (a) with the following paragraphs:
- “(a) the basis of the calculation of a fee or expense that is charged to the mutual fund or directly to its securityholders by the mutual fund or its manager in connection with the holding of securities of the mutual fund is changed in a way that could result in an increase in charges to the mutual fund or to its securityholders;
- (a.1) a new fee or expense, to be charged to the mutual fund or directly to its securityholders by the mutual fund or its manager in connection with the holding of securities of the mutual fund that could result in an increase in charges to the mutual fund or to its securityholders, is established;”.
8. Section 6.2 of the National Instrument is amended by replacing the words “or II” with the words “, II or III” in paragraph 1.
9. Section 9.1 of the National Instrument is amended:
- (1) by inserting the words “or to a person or company providing services to the participating dealer” after the words “to the principal office of the participating dealer” in subsection (1);

- (2) by replacing the words “or by the principal distributor of the mutual fund” with the words “, by the principal distributor of the mutual fund or by a person or company providing services to the participating dealer or principal distributor” in subsection (2);
  - (3) by replacing subsection (4) with the following:
    - “(4) A participating dealer, a principal distributor or a person or company providing services to the participating dealer or principal distributor, that sends purchase orders electronically may
      - (a) specify a time on a business day by which a purchase order must be received in order that it be sent electronically on that business day; and
      - (b) despite subsections (1) and (2), send electronically on the next business day a purchase order received after the time specified under paragraph (a).”.
- 10.** Section 9.4 of the National Instrument is amended by replacing the words “or participating dealer” with the words “, a participating dealer or a person or company providing services to the principal distributor or participating dealer” in subsection (1).
- 11.** Section 10.2 of the National Instrument is amended
- (1) by inserting the words “or to a person or company providing services to the participating dealer” after the words “to the principal office of the participating dealer” in subsection (1);
  - (2) by replacing the words “or by the principal distributor of the mutual fund at a location that is not an order receipt office of the mutual fund” with the words “, by the principal distributor of the mutual fund at a location that is not an order receipt office of the mutual fund, or by a person or company providing services to the participating dealer or principal distributor” in subsection (2); and
  - (3) by replacing subsection (4) with the following:
    - “(4) A participating dealer, a principal distributor, or a person or company providing services to the participating dealer or principal distributor, that sends redemption orders electronically may
      - (a) specify a time on a business day by which a redemption order must be received in order that it be sent electronically on that business day; and
      - (b) despite subsections (1) and (2), send electronically on the next business day a redemption order received after the time specified under paragraph (a).”.
- 12.** Section 11.3 of the National Instrument is repealed and replaced by the following:
- “11.3 Trust Accounts – A principal distributor or participating dealer, or a person or company providing services to the principal distributor or participating dealer, that deposits cash into a trust account in accordance with section 11.1 or 11.2 shall
- (a) advise, in writing, the financial institution with which the account is opened at the time of the opening of the account and annually thereafter, that
    - (i) the account is established for the purpose of holding client funds in trust;

- (ii) the account is to be labelled by the financial institution as a "trust account";
  - (iii) the account is not to be accessed by any person other than authorized representatives of the principal distributor or participating dealer or of a person or company providing services to the principal distributor or participating dealer; and
  - (iv) the cash in the trust account may not be used to cover shortfalls in any accounts of the principal distributor or participating dealer, or of a person or company providing services to the principal distributor or participating dealer;
- (b) ensure that the trust account bears interest at rates equivalent to comparable accounts of the financial institution; and
  - (c) ensure that any charges against the trust account are not paid or reimbursed out of the trust account.”.
- 13.** Section 11.4 of the National Instrument is amended by replacing subsection (1) with the following:
- “(1) Sections 11.1 and 11.2 do not apply to members of the Investment Dealers Association of Canada or The Montreal Exchange.”.
- 14.** Section 12.1 of the National Instrument is amended by replacing subsection (4) with the following:
- “(4) Subsection (3) does not apply to members of the Investment Dealers Association of Canada or The Montreal Exchange.”.
- 15.** Section 13.1 of the National Instrument is amended by adding the following after subsection (1):
- “(1.1) A mutual fund that holds securities of other mutual funds must have dates for the calculation of net asset value that are compatible with those of the other mutual funds.”.
- 16.** The National Instrument is amended by inserting the following after section 19.2:
- “19.3 Revocation of exemptions
- An exemption, waiver or approval granted to a mutual fund under National Policy Statement No. 39 or this Regulation before December 31, 2003, that allows the mutual fund to invest in other mutual funds, shall no longer have effect as of December 31, 2004.”.
- 17.** This Regulation comes into force at the date of its publication in the official Gazette of Québec.