

REGULATION TO AMEND REGULATION 81-102 RESPECTING MUTUAL FUNDS

Securities Act

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

1. Section 1.1 of Regulation 81-102 respecting Mutual Funds is amended:

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

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

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

““borrowing agent” means any of the following:

(a) a custodian or sub-custodian that holds assets in connection with a short sale transaction by a mutual fund;

(b) a qualified dealer from whom a mutual fund borrows securities in order to make a short sale transaction;”;

(3) in the definition of “sales communication”:

(a) by replacing, in the French text of the introductory sentence, the word “prestataire” with the word “fournisseur”;

(b) by deleting, wherever it occurs in subparagraph 1 of paragraph (b), the word “simplified”;

(4) by replacing, in the French text of the definition of “forward contract”, paragraphs 1 and 2 with the following:

“1. livrer l'élément sous-jacent du contrat ou en prendre livraison;

2. effectuer le règlement en espèces plutôt que la livraison;”;

(5) by replacing, in the French text of the definition of “standardized future”, paragraph 1 with the following:

“1. livrer l'élément sous-jacent du contrat ou en prendre livraison;”;

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

““cash cover” means any of the following portfolio assets of a mutual fund that are held by the mutual fund, have not been allocated for specific purposes and are available to satisfy all or part of the obligations arising from a position in specified derivatives held by the mutual fund or from a short sale transaction made by the mutual fund:

(a) cash;

(b) a cash equivalent;

(c) synthetic cash;

(d) a receivable of the mutual fund arising from the disposition of portfolio assets, net of payables arising from the acquisition of portfolio assets;

(e) a security purchased by the mutual fund in a reverse repurchase transaction under section 2.14, to the extent of the cash paid for the security by the mutual fund;

(f) an evidence of indebtedness, other than cash equivalents, that has a remaining term to maturity of 365 days or less and an approved credit rating;

(g) a floating rate evidence of indebtedness not referred to in paragraph (f) above if

(i) the floating interest rate of the evidence of indebtedness is reset no later than every 185 days, and

(ii) the evidence of indebtedness has a market value of approximately par at the time of each change in the rate to be paid to the holder of the evidence of indebtedness;

(h) a security issued by a money market fund;”;

(7) by inserting, in the French text of the definition of “equivalent debt” and after the words “titre de créance”, the words “, un titre de créance”;

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

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

(9) by inserting, in the French text and after the definition of “custodian”, the following:

“« dérivé visé » : un instrument, un contrat ou un titre, dont le cours, la valeur ou les obligations de paiement sont fonction d’un élément sous-jacent, à l’exclusion de ce qui suit :

a) un titre convertible ordinaire;

b) un titre adossé à des créances visé;

c) une part indicielle;

d) une obligation coupons détachés émise par un État;

e) une action donnant droit aux plus-values ou une action donnant droit aux intérêts et aux dividendes provenant du démembrement d’actions ou de titres à revenu fixe;

f) un bon ou un droit ordinaire;

g) un bon de souscription spécial;”;

(10) by replacing, in the French text of the definition of “underlying interest”, the words “instrument dérivé” with the word “dérivé” and the words “de l’instrument dérivé” with the words “du dérivé”;

(11) by inserting, after the definition of “clearing corporation option”, the following:

““clone fund” means a mutual fund that has adopted a fundamental investment objective to link its performance to the performance of another mutual fund;”;

(12) by inserting, after the definition of “equivalent debt”, the following:

““fixed portfolio ETF” means an exchange-traded mutual fund

(a) that is not in continuous distribution;

(b) whose investment objectives include holding and maintaining a fixed portfolio of publicly listed equity securities of one or more issuers that are disclosed in its prospectus, and

(c) that trades in the equity securities referred to in paragraph (b) only in the circumstances disclosed in its prospectus;

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

(14) by deleting, in the French text and after the definition of “performance data”, the definition of “specified derivative”;

(15) by replacing, in the definition of “member of the organization”, the words “National Instrument 81-105 Mutual Fund Sales Practices” with the words “Regulation 81-105 respecting Mutual Fund Sales Practices adopted pursuant to Decision No. 2001-C-0212 dated May 22, 2001”;

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

““manager-prescribed number of units” means, in relation to an exchange-traded mutual fund that is in continuous distribution, the number of units determined by the manager from time to time for the purposes of subscription orders, exchanges, redemptions or for other purposes;”;

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

““overall rating or ranking” means a rating or ranking that is computed from performance data for a mutual fund over one or more periods of standard performance data, which at a minimum include the longest period for which the mutual fund is required under securities legislation to give standard performance data, except the period since the inception of the mutual fund;”;

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

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

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

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

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

““mutual fund rating entity” means an entity

- (a) that rates or ranks the performance of a mutual fund through an objective methodology that is applied consistently to all mutual funds rated or ranked by it,
- (b) that is not a member of the organization of a mutual fund, and
- (c) whose services are not procured by the manager of a mutual fund or any of its affiliates to assign the mutual fund a rating or ranking;”;

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

““permitted supranational agency” means the African Development Bank, the Asian Development Bank, the Caribbean Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank, the International Bank for Reconstruction and Development and the International Finance Corporation;”;

(22) by replacing the definition of “index participation unit” with the following:

“index participation unit” means a security traded on a stock exchange in Canada, the United States or the United Kingdom and issued by an issuer the only purpose of which is to

- (a) hold the securities that are included in a specified widely quoted market index in substantially the same proportion as those securities are reflected in that index, or
- (b) invest in a manner that causes the issuer to replicate the performance of that index;”;

(23) by inserting the following definition after the definition of “equivalent debt”:

“floating rate evidence of indebtedness” means an evidence of indebtedness that pays a floating rate of interest determined over the term of the obligation by reference to a widely accepted market benchmark interest rate and that satisfies any of the following requirements:

- (a) if it was issued by a person or company other than a government or a permitted supranational agency, has an approved credit rating;
- (b) if it was issued by a government or a permitted supranational agency, has its principal and interest fully and unconditionally guaranteed by any of the following:
 - (i) the government of Canada or the government of a jurisdiction of Canada;
 - (ii) the government of the United States of America, the government of one of the states of the United States of America, the government of another sovereign state or a permitted supranational agency, if, in each case, the evidence of indebtedness has an approved credit rating;”;

(24) by replacing, in the French text of the definition of “conventional floating rate debt instrument”, the words “taux repère” with the words “taux de référence”;

(25) by deleting, in the French text of the definition of “restricted security”, the word “instruments”.

2. Section 1.3 of the Regulation is amended by deleting paragraph (3).
3. Section 2.1 of the Regulation is replaced with the following:

“2.1. Concentration Restriction

(1) A mutual fund shall not purchase a security of an issuer, enter into a specified derivatives transaction or purchase index participation units if, immediately after the transaction, more than 10 percent of the net assets of the mutual fund, taken at market value at the time of the transaction, would be invested in securities of any issuer.

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

- (a) a government security;
- (b) a security issued by a clearing corporation;
- (c) a security issued by a mutual fund if the purchase is made in accordance with the requirements of section 2.5;
- (d) an index participation unit that is a security of a mutual fund;
- (e) an equity security where the purchase is made by a fixed portfolio ETF in accordance with its investment objectives.

(3) In determining a mutual fund’s compliance with the restrictions contained in this section, the mutual fund shall, for each long position in a specified derivative that is held by the mutual fund for purposes other than hedging and for each index participation unit held by the mutual fund, consider that it holds directly the underlying interest of that specified derivative or its proportionate share of the securities held by the issuer of the index participation unit.

(4) Despite subsection (3), the mutual fund shall not include in the determination referred to in subsection (3) a security or instrument that is a component of, but that represents less than 10 percent of

- (a) a stock or bond index that is the underlying interest of a specified derivative; or
- (b) the securities held by the issuer of an index participation unit.

(5) Despite subsection (1), an index mutual fund, the name of which includes the word “index”, may, in order to satisfy its fundamental investment objectives, purchase a security, enter into a specified derivatives transaction or purchase index participation units if its prospectus contains the disclosure referred to in subsection (5) of Item 6 and subsection (5) of Item 9 of Part B of Form 81-101F1 Contents of Simplified Prospectus.”.

4. Section 2.2 of the Regulation is amended by replacing paragraph (1.1) with the following:

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

- (a) a security issued by a mutual fund if the purchase is made in accordance with section 2.5;
- (b) an index participation unit that is a security of a mutual fund.”.

5. Sections 2.5 and 2.6 of the Regulation are replaced 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 offers or has offered securities under a simplified prospectus in accordance with Regulation 81-101 respecting Mutual Fund Prospectus Disclosure adopted pursuant to Decision No. 2001-C-0283 dated June 12, 2001;

(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) the mutual fund and the other mutual fund are reporting issuers in the local jurisdiction;

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

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

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

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

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

(b) issued by another mutual fund established with the approval of the government of a foreign jurisdiction and the only means by which the foreign jurisdiction permits investment in the securities of issuers of that foreign jurisdiction is through that type of mutual fund.

(4) Paragraph (2)(b) does not apply if the other mutual fund

(a) is an clone fund; or

(b) purchases or holds securities

(i) of a money market fund; or

(ii) that are index participation units issued by a mutual fund.

(5) Paragraphs (2)(e) and (f) do not apply to brokerage fees incurred for the purchase or sale of an index participation unit issued by a mutual fund.

(6) A mutual fund that holds securities of another mutual fund that is managed by the same manager or an affiliate or associate of the manager

(a) shall not vote any of those securities; and

(b) may, if the manager so chooses, arrange for all of the securities it holds of the other mutual fund to be voted by the beneficial holders of securities of the mutual fund.

(7) The mutual fund conflict of interest investment restrictions and the mutual fund conflict of interest reporting requirements do not apply to a mutual fund which purchases or holds securities of another mutual fund, if the purchase or transaction is made in accordance with this section.

“2.6. Investment Practices

A mutual fund shall not

(a) borrow cash or provide a security interest over any of its portfolio assets unless

(i) the transaction is a temporary measure to accommodate requests for the redemption of securities of the mutual fund while the mutual fund effects an orderly liquidation of portfolio assets, or to permit the mutual fund to settle portfolio transactions and, after giving effect to all transactions undertaken under this subparagraph, the outstanding amount of all borrowings of the mutual fund does not exceed five percent of the net assets of the mutual fund taken at market value at the time of the borrowing;

(ii) the security interest is required to enable the mutual fund to effect a specified derivative or short sale transaction under this Regulation, is made in accordance with industry practice for that type of transaction and relates only to obligations arising under that particular transaction;

(iii) the security interest secures a claim for the fees and expenses of the custodian or a sub-custodian of the mutual fund for services rendered in that capacity as permitted by subsection 6.4(3); or

(iv) in the case of an exchange-traded mutual fund that is not in continuous distribution, the transaction is to finance the acquisition of its portfolio securities and the outstanding amount of all borrowings is repaid on the closing of its initial public offering;

(b) purchase securities on margin, unless permitted by section 2.7 or 2.8;

(c) sell securities short, other than in compliance with section 2.6.1, unless permitted by section 2.7 or 2.8;

(d) purchase a security, other than a specified derivative, that by its terms may require the mutual fund to make a contribution in addition to the payment of the purchase price;

(e) engage in the business of underwriting, or marketing to the public, securities of any other issuer;

(f) lend cash or portfolio assets other than cash;

(g) guarantee securities or obligations of a person; or

(h) purchase securities other than through market facilities through which these securities are normally bought and sold unless the purchase price approximates the prevailing market price or the parties are at arm's length in connection with the transaction.

“2.6.1. Short Sales

(1) A mutual fund may sell a security short if

(a) the security sold short is sold for cash;

- (b) the security sold short is not any of the following:
 - (i) a security that the mutual fund is otherwise not permitted to purchase at the time of the short sale transaction;
 - (ii) an illiquid asset;
 - (iii) a security of an investment fund unless the security is an index participation unit; and
- (c) at the time the mutual fund sells the security short
 - (i) the mutual fund has borrowed or arranged to borrow from a borrowing agent the security that is to be sold under the short sale transaction;
 - (ii) the aggregate market value of all securities of the issuer of the securities sold short by the mutual fund does not exceed 5% of the net asset value of the mutual fund; and
 - (iii) the aggregate market value of all securities sold short by the mutual fund does not exceed 20% of the net asset value of the mutual fund.

(2) A mutual fund that enters into a short sale transaction must hold cash cover in an amount, including cash cover in the form of mutual fund assets deposited with borrowing agents as security in connection with short sale transactions, that is at least 150% of the aggregate market value of all securities sold short by the mutual fund on a daily marked to market basis.

(3) A mutual fund must not use the cash from a short sale transaction to enter into a long position in a security other than cash cover.”.

6. Section 2.7 of the Regulation is amended:

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

“(1) A mutual fund may not purchase an option that is not a clearing corporation option or a debt-like security or enter into a swap or a forward contract unless at the time of the transaction, the option, debt-like security, swap or contract, or equivalent debt of the counterparty, or of a person or company that has fully and unconditionally guaranteed the obligations of the counterparty in respect of the option, debt-like security, swap or contract, has an approved credit rating.”;

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

(3) by deleting, in the French text of paragraphs (4) and (5), the word “instruments”.

7. Section 2.8 of the Regulation is amended by replacing, in the French text, the title and paragraph (1) with the following:

“2.8. Les opérations sur dérivés visés dans un but autre que de couverture”;

- 1) L’OPC ne peut :

a) acquérir un titre assimilable à un titre de créance qui comporte une composante consistant en une option, à moins que, par suite de l’acquisition, l’OPC n’ait pas plus de 10 % de son actif net, calculé à la valeur au marché, placé dans ces instruments dans un but autre que de couverture;

b) vendre une option d'achat, ou avoir en circulation une option d'achat souscrite, qui n'est pas une option sur contrats à terme, à moins que, tant et aussi longtemps que la position demeure ouverte, l'OPC ne détienne l'une des positions suivantes :

i) une quantité équivalente de l'élément sous-jacent de l'option;

ii) un droit ou une obligation, pouvant être exercé à n'importe quel moment où l'option peut être levée, d'acquérir une quantité équivalente de l'élément sous-jacent de l'option, et une couverture en espèces qui, avec la couverture constituée pour cette position, est au moins égale à l'excédent du prix d'exercice du droit ou de l'obligation d'acquérir l'élément sous-jacent sur le prix de levée de l'option;

iii) une combinaison des positions prévues aux sous- dispositions *i* et *ii* qui est suffisante, sans nécessité de recourir à d'autres éléments d'actif de l'OPC, pour que celui-ci puisse honorer ses obligations de livrer l'élément sous-jacent de l'option;

c) vendre une option de vente, ou avoir en circulation une option de vente souscrite qui n'est pas une option sur contrats à terme, à moins que, tant et aussi longtemps que la position demeure ouverte, l'OPC ne détienne l'une des positions suivantes :

i) un droit ou une obligation, pouvant être exercé à n'importe quel moment où l'option peut être levée, de vendre une quantité équivalente de l'élément sous-jacent de l'option, et une couverture en espèces qui, avec la couverture constituée pour cette position, est au moins égale à l'excédent du prix de levée de l'option sur le prix d'exercice du droit ou de l'obligation de vendre l'élément sous-jacent;

ii) une couverture en espèces qui, avec la couverture constituée pour cette position, est au moins égale au prix de levée de l'option;

iii) une combinaison des positions prévues aux dispositions *i* et *ii* qui est suffisante, sans nécessité de recourir à d'autres éléments d'actif de l'OPC, pour que celui-ci puisse acquérir l'élément sous-jacent de l'option;

d) ouvrir ou maintenir une position acheteur sur un titre assimilable à un titre de créance qui comporte une composante consistant en une position acheteur sur un contrat à terme de gré à gré, ou sur un contrat à terme standardisé ou un contrat à terme de gré à gré, à moins que l'OPC ne détienne une couverture en espèces qui, avec la couverture constituée pour le dérivé visé et la valeur au marché du dérivé visé, est au moins égale, sur la base d'une évaluation quotidienne à la valeur du marché, à l'exposition au marché sous-jacent du dérivé visé;

e) ouvrir ou maintenir une position vendeur sur un contrat à terme standardisé ou un contrat à terme de gré à gré, à moins que l'OPC ne détienne l'une des positions suivantes :

i) une quantité équivalente de l'élément sous-jacent du contrat;

ii) un droit ou une obligation d'acquérir une quantité équivalente de l'élément sous-jacent du contrat et une couverture en espèces qui, avec la couverture constituée pour la position, est au moins égale à l'excédent du prix d'exercice du droit ou de l'obligation d'acquérir l'élément sous-jacent sur le prix du contrat;

iii) une combinaison des positions prévues aux dispositions *i* et *ii* qui est suffisante, sans nécessité de recourir à d'autres éléments d'actif de l'OPC, pour que celui-ci puisse livrer l'élément sous-jacent du contrat;

f) conclure ou conserver une position sur un swap, sauf dans les cas suivants :

i) lorsque l'OPC aurait droit à des paiements aux termes du swap, il détient une couverture en espèces qui, avec la couverture constituée pour le swap et la valeur au marché du swap, est au moins égale, selon une évaluation quotidienne au cours du marché, à l'exposition au marché sous-jacent du swap;

ii) lorsque l'OPC serait tenu d'effectuer des paiements aux termes du swap, il détient l'une ou l'autre des positions suivantes :

A) une quantité équivalente de l'élément sous-jacent du swap;

B) un droit ou une obligation d'acquérir une quantité équivalente de l'élément sous-jacent de ce swap et une couverture en espèces qui, avec la couverture constituée pour la position sur le swap, est au moins égale au montant global des obligations de l'OPC aux termes du swap;

C) une combinaison des positions indiquées aux sous-dispositions A et B qui est suffisante, sans nécessité de recourir à d'autres éléments d'actif de l'OPC, pour que celui-ci puisse honorer ses obligations prévues dans le swap.”.

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

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

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

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

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

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

(a) its prospectus contains the disclosure required for a mutual fund engaging in the intended activity; and

(b) the mutual fund has provided to its securityholders, not less than 60 days before it begins the activity, written notice that it may engage in the intended activity and the disclosure required for mutual funds engaging in the intended activity.

(2) A mutual fund is not required to provide the notice referred to in paragraph (1)(b) if each prospectus of the mutual fund since its inception contains the disclosure referred to in paragraph (1)(a).”.

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

“2.18. Money Market Fund

(1) A mutual fund must not describe itself as a “money market fund” in its prospectus, a continuous disclosure document or a sales communication unless

(a) it has all of its assets invested in any of the following:

(i) cash;

(ii) cash equivalents;

(iii) evidences of indebtedness, other than cash equivalents, that have remaining terms to maturity of 365 days or less and an approved credit rating;

(iv) floating rate evidences of indebtedness not referred to in subparagraphs (ii) and (iii), if

(A) the floating interest rates of the evidences of indebtedness are reset no later than every 185 days, and

(B) the principal amounts of the obligations will continue to have a market value of approximately par at the time of each change in the rate to be paid to the holders of the evidences of indebtedness, or

(v) securities issued by one or more money market funds, if the investment is made in accordance with section 2.5;

(b) it has a portfolio of assets, excluding a security in subparagraph (a)(v) with a dollar-weighted average term to maturity not exceeding

(i) 120 days, and

(ii) 90 days when calculated on the basis that the term of a floating rate obligation is the period remaining to the date of the next rate setting;

(c) it has not less than 95% of its assets invested in cash, cash equivalents or evidences of indebtedness denominated in a currency in which the net asset value per security of the mutual fund is calculated, and

(d) it has not less than

(i) 5% of its assets invested in cash or readily convertible into cash within one day, and

(ii) 15% of its assets invested in cash or readily convertible into cash within one week.

(2) A mutual fund that describes itself as a “money market fund” must not use a specified derivative or enter into a short sale transaction.”.

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

“3.3. Prohibition Against Reimbursement of Organization Costs

(1) None of the costs of incorporation, formation or initial organization of a mutual fund, or of the preparation and filing of any of the preliminary prospectus, preliminary annual information form, initial prospectus or annual information form of the mutual fund shall be borne by the mutual fund or its securityholders.

(2) Subsection (1) does not apply to an exchange-traded mutual fund unless the fund is in continuous distribution.”.

12. Section 4.1 of the Regulation is amended:

(1) by replacing, in paragraph 5, the word “correspobnding” with the word “corresponding”;

(2) by inserting, after paragraph (5), the following:

“(6) In paragraph (4)(b), “approved rating” has the meaning ascribed to it in Regulation 44-101 respecting Short Form Prospectus Distributions approved by Ministerial Order No. 2005-24 dated November 30, 2005.”.

13. Subparagraph 2 of paragraph (1) of section 4.2 of the Regulation is amended by replacing, in the French text, the word “admsitrateur” with the word “administrateur”.

14. Section 5.3 of the Regulation is amended:

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

“(1) Despite section 5.1, the approval of securityholders of a mutual fund is not required to be obtained for a change referred to in paragraphs 5.1(a) or 5.1(a.1) if any of the following sets of conditions are met:

(a) the mutual fund

(i) is at arm’s length to the person or company charging the fee or expense that is to be changed or introduced;

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

(iii) sends the notice referred to in subparagraph (ii) 60 days before the effective date of the change;

(b) the mutual fund

(i) is permitted by this Regulation to be described as a “no-load” fund;

(ii) discloses in its prospectus 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 or to its securityholders, and

(iii) sends the notice referred to in subparagraph (ii) 60 days before the effective date of the change.”;

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

15. Section 6.1 of the Regulation is amended:

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

(2) by replacing, in paragraph (2), the words “sections 6.8 and 6.9” with the words “sections 6.8, 6.8.1 and 6.9”;

16. Section 6.5 of the Regulation is amended:

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

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

“4) Le dépositaire ou le sous-dépositaire qui se prévaut du paragraphe 3 doit veiller à ce que les dossiers de n’importe quel participant au système de gestion en

compte courant ou ceux du dépositaire contiennent un numéro de compte ou une autre désignation qui suffise à montrer que l'actif du portefeuille est la propriété véritable de l'OPC.”.

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

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

“6.8.1. Custodial Provisions relating to Short Sales

(1) Except when the borrowing agent is the mutual fund’s custodian or sub-custodian, if a mutual fund deposits portfolio assets with a borrowing agent as security in connection with a short sale transaction, the amount of portfolio assets deposited with the borrowing agent must not, when aggregated with the amount of portfolio assets already held by the borrowing agent as security for outstanding short sale transactions by the mutual fund, exceed 10% of the net asset value of the mutual fund at the time of deposit.

(2) A mutual fund may not deposit portfolio assets in connection with a short sale transaction with a dealer in Canada unless the dealer is registered in a jurisdiction of Canada and is a member of IIROC.

(3) A mutual fund may not deposit portfolio assets in connection with a short sale transaction with a dealer outside of Canada unless that dealer

(a) is a member of a stock exchange that requires the dealer to be subjected to a regulatory audit; and

(b) has a net worth, determined from its most recent audited financial statements that have been made public, in excess of the equivalent of \$50 million.”.

19. Section 9.4 of the Regulation is amended:

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

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

“(2) Payment of the issue price of securities of a mutual fund must be made to the mutual fund on or before the third business day after the pricing date for the securities by using any of the following methods of payment:

(a) a payment of cash in a currency in which the net asset value per security of the mutual fund is calculated;

(b) good delivery of securities if

(i) the mutual fund would at the time of payment be permitted to purchase those securities,

(ii) the securities are acceptable to the portfolio adviser of the mutual fund and consistent with the mutual fund’s investment objectives, and

(iii) the value of the securities is at least equal to the issue price of the securities of the mutual fund for which they are payment, valued as if the securities were portfolio assets of the mutual fund;

(c) a combination of the methods of payments referred to in paragraphs (a) and (b).”.

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

“10.3. Redemption Price of Securities

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

(2) Despite subsection (1) the redemption price of a security of an exchange-traded mutual fund that is not in continuous distribution may be a price that is less than the net asset value of the security and that is determined on a date specified in the exchange-traded mutual fund’s prospectus or annual information form.

(3) Despite subsection (1) the redemption price of a security of an exchange-traded mutual fund that is in continuous distribution may, if a securityholder redeems less than the manager-prescribed number of units, be a price that is computed by reference to the closing price of the security on the stock exchange on which the security is listed and posted for trading, next determined after the receipt by the exchange-traded mutual fund of the redemption order.”.

21. Section 10.4 of the Regulation is amended:

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

“(1.1) Despite subsection (1), an exchange-traded mutual fund that is not in continuous distribution may pay the redemption price for securities that are the subject of a redemption order on the redemption payment date that next follows the valuation date on which the redemption price was established.”;

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

“(3) A mutual fund must pay the redemption price of a security by using any of the following methods of payment:

(a) a payment of cash in the currency in which the net asset value per security of the redeemed security was calculated;

(b) with the prior written consent of the securityholder, by making good delivery to the securityholder of portfolio assets, the value of which is equal to the amount at which those portfolio assets were valued in calculating the net asset value per security used to establish the redemption price;

(c) a combination of the methods of payment referred to in paragraphs (a) and (b).”.

22. Paragraph (1) of section 10.6 of the Regulation is replaced with the following:

“(1) A mutual fund may suspend the right of securityholders to request that the mutual fund redeem its securities for the whole or any part of a period during which any of the following occurs:

(a) normal trading is suspended on a stock exchange, options exchange or futures exchange within or outside Canada on which securities are listed and posted for trading, or on which specified derivatives are traded, if those securities or specified derivatives represent more than 50% by value, or underlying market exposure, of the total assets of the mutual fund without allowance for liabilities and if those securities or

specified derivatives are not traded on any other exchange that represents a reasonably practical alternative for the mutual fund;

(b) in the case of a clone fund, the underlying fund to which its performance is linked has suspended redemptions.”.

23. Section 11.2 of the Regulation is amended:

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

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

24. Paragraph (1) of section 11.4 of the Regulation is replaced with the following:

“(1) Sections 11.1 and 11.2 do not apply to a member of IIROC, the MFDA or in Quebec, a mutual fund dealer.”.

25. Paragraph (4) of section 12.1 of the Regulation is replaced with the following:

“(4) Subsections (2) and (3) do not apply to a member of IIROC, the MFDA or in Quebec, a mutual fund dealer.”.

26. Section 14.1 of the Regulation is replaced with the following:

“14.1. Record Date

The record date for determining the right of securityholders of a mutual fund to receive a dividend or distribution by the mutual fund must be one of the following:

(a) the day on which the net asset value per security is determined for the purpose of calculating the amount of the payment of the dividend or distribution;

(b) the last day on which the net asset value per security of the mutual fund was calculated before the day referred to in paragraph (a);

(c) if the day referred to in paragraph (b) is not a business day, the last day on which the net asset value per security of the mutual fund was calculated before the day referred to in paragraph (b);

(d) in the case of an exchange-traded mutual fund, a date determined in accordance with the rules of the exchange on which the securities of the exchange-traded mutual fund are listed and posted for trading.”.

27. Paragraph (4) of section 15.3 of the Regulation is replaced with the following:

“(4) A sales communication may not refer to a performance rating or ranking of a mutual fund or asset allocation service unless

(a) the rating or ranking is prepared by a mutual fund rating entity;

(b) standard performance data is provided for any mutual fund or asset allocation service for which a performance rating or ranking is given;

(c) the rating or ranking is provided for each period for which standard performance data is required to be given, except the period since the inception of the mutual fund;

(d) the rating or ranking is based on a published category of mutual funds that

(i) provides a reasonable basis for evaluating the performance of the mutual fund, and

(ii) is not established or maintained by an organization that is a member of the organization of the mutual fund;

(e) the sales communication contains the following disclosure:

(i) the name of the category within which the mutual fund is rated or ranked, including the name of the organization that maintains the category,

(ii) the number of investment funds in the applicable category for each period of standard performance data required under paragraph (c),

(iii) the name of the mutual fund rating entity that provided the rating or ranking,

(iv) the length of the period or the first day of the period on which the rating or ranking is based, and its ending date,

(v) a statement that the rating or ranking is subject to change every month,

(vi) the key elements of the methodology used by the rating entity to establish the rating or ranking, along with a reference to the mutual fund rating entity's website for greater detail on the methodology, and

(vii) the significance of the rating or ranking on the mutual fund rating entity's scale of ratings and rankings, and

(f) the rating or ranking is to the same calendar month end that is

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

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

(4.1) Despite paragraph (4)(c), a sales communication may refer to an overall rating or ranking of a mutual fund or asset allocation service in addition to each rating or ranking required under paragraph (4)(c) if the sales communication otherwise complies with the requirements of subsection (4)."

28. Section 15.4 of the Regulation is amended:

(1) by replacing, in the French text of paragraph (8), the words "rpartition" and "rendment" with, respectively, the words "répartition" and "rendement";

(2) by deleting, wherever it occurs in paragraph (9), the word "simplified".

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

"20.4. Mortgage Funds

Paragraphs 2.3(b) and (c) do not apply to a mutual fund that has adopted fundamental investment objectives to permit it to invest in mortgages in accordance with Regulation No. 29 respecting Mutual Funds Investing in Mortgages adopted pursuant to Decision No. 5258 dated June 28, 1977 if

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

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

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

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

31. The Regulation is amended by replacing, wherever they occur, the words “simplified prospectus” with the word “prospectus”.

32. The Regulation is amended by replacing, wherever they occur in the French text, the words “instrument dérivé” and “instruments dérivés” with, respectively, the words “dérivé” and “dérivés”.

33. The Regulation is amended by replacing, wherever they occur in the French text, the words “prestataire” and “prestataires” with, respectively, the words “fournisseur” and “fournisseurs”.

34. This Regulation comes into force on (*indicate here the date of coming into force of this Regulation*).