

## **REGULATION TO AMEND REGULATION 81-102 RESPECTING MUTUAL FUNDS**

Securities Act

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

1. Regulation 81-102 respecting Mutual Funds is amended by replacing the title with the following:

**“REGULATION 81-102 RESPECTING INVESTMENT FUNDS”.**

2. Section 1.1 of the Regulation is amended:

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

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

““custodian” means the institution appointed by an investment fund to hold portfolio assets of the investment fund in accordance with Part 6;”;

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

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

4) by replacing, wherever they occur in the definition of the expression “debt-like security”, the words “mutual fund” with the words “investment fund”, and making the necessary changes;

5) by replacing the definition of the expression “fixed portfolio ETF” with the following:

““fixed portfolio fund”: means an exchange-traded mutual fund not in continuous distribution, or a non-redeemable investment fund, that

(a) has fundamental investment objectives which include holding and maintaining a fixed portfolio of publicly traded equity securities of one or more issuers the names of which are disclosed in its prospectus, and

(b) trades securities referred to in paragraph (a) only in the circumstances disclosed in its prospectus;”;

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

“(b) the evidence of indebtedness is issued, or 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 an approved credit rating;”;

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

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

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

“investment fund conflict of interest investment restrictions” means any provisions of securities legislation that

(a) prohibit an investment fund from knowingly making or holding an investment in any person who is a substantial security holder, as defined in securities legislation, of the investment fund, its management company, manager or distribution company;

(b) prohibit an investment fund from knowingly making or holding an investment in any person in which the investment fund, alone or together with one or more related investment funds, is a substantial security holder, as defined in securities legislation;

(c) prohibit an investment fund from knowingly making or holding an investment in an issuer in which any person who is a substantial security holder of the investment fund, its management company, manager or distribution company, has a significant interest, as defined in securities legislation;

(d) prohibit an investment fund, a responsible person as defined in securities legislation, a portfolio adviser or a registered person acting under a management contract from knowingly causing any investment portfolio managed by it, or an investment fund, to invest in, or prohibit an investment fund from investing in, any issuer in which a responsible person, as defined in securities legislation, is an officer or director unless the specific fact is disclosed to the investment fund, securityholder or client, and where securities legislation requires it, the written consent of the client to the investment is obtained before the purchase;

(e) prohibit an investment fund, a responsible person as defined in securities legislation, or a portfolio adviser from knowingly causing any investment portfolio managed by it to purchase or sell, or prohibit an investment fund from purchasing or selling, the securities of any issuer from or to the account of a responsible person, as defined in securities legislation, an associate of a responsible person or the portfolio adviser; and

(f) prohibit a portfolio adviser or a registered person acting under a management contract from subscribing to or buying securities on behalf of an investment 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;

“investment fund conflict of interest reporting requirements” means any provisions of securities legislation that require the filing of a report with the securities regulatory authority in prescribed form that discloses every transaction of purchase or sale of portfolio assets between the investment fund and specified related persons;”;

10) 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, or

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

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

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

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

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

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

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

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

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

17) by replacing, wherever they occur in the definitions of the expressions “restricted security” and “sales communication”, the words “mutual fund” with the words “investment fund”, and making the necessary changes;

18) by inserting, after the definition of the expression “sales communication”, the following:

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

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

20) by deleting, at the end of paragraph (a) of the definition of the expression “specified dealer”, the word “or”;

21) by replacing the definition of the expression “sub-custodian” with the following:

““sub-custodian” means, for an investment fund, an entity that has been appointed to hold portfolio assets of the investment fund in accordance with Part 6 by either the custodian or a sub-custodian of the investment fund;”;

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

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

**“1.2. Application**

(1) This Regulation applies only to

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

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

(b) a person in respect of activities pertaining to an investment fund referred to in paragraphs (a) and (a.1) or pertaining to the filing of a prospectus to which subsection 3.1(1) applies.

(2) Despite subsection (1), this Regulation does not apply to a scholarship plan.”.

4. Section 2.1 of the Regulation is amended:

(1) by replacing, in paragraph (1), the words « A mutual fund shall” with the words “An investment fund must”;

(2) in paragraph (2):

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

(b) by replacing, in subparagraph (e), the word “ETF” with the word “fund”;

(3) by replacing, in paragraph (3), the words “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” with the words “an investment fund’s compliance with the restrictions contained in this section, the investment fund must, for each long position in a specified derivative that is held by the investment fund for purposes other than hedging and for each index participation unit held by the investment fund”;

(4) by replacing, in paragraph (4), the words “the mutual fund shall not” with the words “the investment fund must not”.

5. Section 2.2 of the Regulation is amended:

(1) in paragraph (1):

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

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

(2) in paragraph (1.1):

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

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

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

“(2) If an investment fund acquires a security of an issuer other than as the result of a purchase, and the acquisition results in the investment fund exceeding the limits described in paragraph (1)(a), the investment fund must as quickly as is commercially reasonable, and in any event no later than 90 days after the acquisition, reduce its holdings of those securities so that it does not hold securities exceeding those limits.”;

(4) by replacing, in paragraph (3), the words “a mutual fund shall” with the words “an investment fund must”.

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

**“2.3. Restrictions Concerning Types of Investments**

(1) A mutual fund must not

(a) purchase real property;

(b) purchase a mortgage, other than a guaranteed mortgage;

(c) purchase a guaranteed mortgage if, immediately after the purchase, more than 10% of its net asset value would be made up of guaranteed mortgages;

(d) purchase a gold certificate, other than a permitted gold certificate;

(e) purchase gold or a permitted gold certificate if, immediately after the purchase, more than 10% of its net asset value would be made up of gold and permitted gold certificates;

(f) except to the extent permitted by paragraphs (d) and (e), purchase a physical commodity;

(g) purchase, sell or use a specified derivative other than in compliance with sections 2.7 to 2.11;

(h) purchase, sell or use a specified derivative the underlying interest of which is

(i) a physical commodity other than gold, or

(ii) a specified derivative of which the underlying interest is a physical commodity other than gold; or

(i) purchase an interest in a loan syndication or loan participation if the purchase would require the mutual fund to assume any responsibilities in administering the loan in relation to the borrower.

(2) A non-redeemable investment fund must not

(a) purchase real property;

(b) purchase a mortgage, other than a guaranteed mortgage;

- (c) purchase a gold certificate, other than a permitted gold certificate;
- (d) purchase a physical commodity or a permitted gold certificate or purchase, sell or use a specified derivative the underlying interest of which is a physical commodity or a permitted gold certificate if, immediately after the purchase, sale or use, the non-redeemable investment fund's holdings of physical commodities and permitted gold certificates would exceed an amount equal to 10% of its net asset value;
- (e) purchase, sell or use a specified derivative other than in compliance with sections 2.7 to 2.11; or
- (f) 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.

(3) In determining a non-redeemable investment fund's holdings of physical commodities and permitted gold certificates for the purposes of paragraph (2)(d), the non-redeemable investment fund must

- (a) for each long position and short position in a specified derivative that is held, consider that it holds directly the equivalent quantity of the underlying interest of that specified derivative; and
- (b) aggregate each holding determined in accordance with paragraph (a)."

7. Section 2.4 of the Regulation is amended by replacing, wherever they occur, the words "mutual fund" with the words "investment fund", and making the necessary changes, and the word "shall" with the word "must".

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

**"2.5. Investments in Other Investment Funds**

(1) For the purposes of this section, an investment fund is considered to be holding a security of another investment fund if

- (a) it holds securities issued by the other investment fund; or
- (b) it is maintaining a position in a specified derivative for which the underlying interest is a security of the other investment fund.

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

- (a) the other investment fund is a mutual fund that is subject to this Regulation and,
  - (i) if the investment fund is a mutual fund, the other investment fund offers or has offered securities under a simplified prospectus in accordance with Regulation 81-101 respecting Mutual Fund Prospectus Disclosure (chapter V-1.1, r. 38);
  - (ii) if the investment fund is a non-redeemable investment fund, the other investment fund is not a commodity pool as defined in Regulation 81-104 respecting Commodity Pools (chapter V-1.1, r. 40);
- (b) at the time of the purchase of that security, the other investment holds no more than 10% of its net asset value in securities of other investment funds;

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

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

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

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

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

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

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

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

(a) is a clone fund; or

(b) in accordance with this section purchases or holds securities

(i) of a money market fund; or

(ii) that are index participation units issued by an investment fund.

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

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

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

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

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

**9.** Section 2.6 of the Regulation is amended:

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

(2) in paragraph (a):

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

“(i) in the case of a mutual fund, the transaction is a temporary measure to accommodate requests for the redemption of securities of the mutual fund while the mutual fund effects an orderly liquidation of portfolio assets, or to permit the mutual fund to settle portfolio transactions and, after giving effect to all transactions undertaken under this subparagraph, the outstanding amount of all borrowings of the mutual fund does not exceed 5% of its net asset value at the time of the borrowing;

(i.1) in the case of a non-redeemable investment fund, the cash is borrowed from a Canadian financial institution and the outstanding amount of all borrowings of the investment fund does not exceed 30% of its net asset value at the time of the borrowing;”;

(b) by replacing, in subparagraph (ii), the words “mutual fund” with the words “investment fund” and the word “made” with the word “provided”;

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

“(ii.1) in the case of a non-redeemable investment fund, the security interest is required to enable the non-redeemable investment fund to effect cash borrowings under subparagraph (i.1), is provided in accordance with industry practice for the loan and relates only to obligations arising under the loan;”;

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

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

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

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

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

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

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

(a.1) in the case of an exchange-traded mutual fund that is not in continuous distribution or 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”;

(2) A mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution, is not required to provide the notice referred to in paragraph (1)(b)



if each prospectus of the mutual fund since its inception has contained the disclosure referred to in paragraph (1)(a).

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

**12.** Section 2.12 of the Regulation is amended:

(1) in paragraph (1):

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

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

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

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

(e) by replacing, wherever they occur in point 6, the words “mutual fund” with the words “investment fund”;

(f) by replacing, wherever they occur in point 7, the words “mutual fund” with the words “investment fund”;

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

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

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

(j) by replacing point 12 with the following:

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

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

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

**13.** Section 2.13 of the Regulation is amended:

(1) in paragraph (1):

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

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

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

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

(e) by replacing, wherever they occur in point 6, the words “mutual fund” with the words “investment fund”;

(f) by replacing, in point 7, the words “mutual fund” with the words “investment fund”;

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

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

(i) by replacing point 11 with the following:

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

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

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

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

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

(a.1) in the case of an exchange-traded mutual fund that is not in continuous distribution or 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”;

(b) the investment fund has provided to its securityholders, not less than 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 (a.1), as applicable.

(2) Paragraph (1)(b) does not apply to a mutual fund that has entered into reverse repurchase agreements as permitted by a decision of the regulator, except in

Québec, or the securities regulatory authority.

(3) Paragraph (1)(b) 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 since its inception contains the disclosure referred to in paragraph (1)(a).

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

**15.** Section 2.18 of the Regulation is amended:

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

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

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

**16.** Section 3.1 of the Regulation is amended:

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

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

**17.** Section 3.3 of the Regulation is amended:

(1) by replacing, in paragraph (1), the words “initial prospectus or annual information form of the mutual fund shall” with the words “preliminary fund facts document, initial prospectus, annual information form or fund facts document of the mutual fund may”;

(2) by deleting paragraph (2);

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

“(3) None of the costs of incorporation, formation or initial organization of a non-redeemable investment fund, or of the preparation and filing of the initial preliminary prospectus and initial prospectus of the non-redeemable investment fund or documents that must be filed concurrently with the initial preliminary prospectus or initial prospectus, may be borne by the non-redeemable investment fund or its securityholders.”.

**18.** Section 4.1 of the Regulation is replaced with the following:

**“4.1. Prohibited Investments**

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

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

affiliate or associate of the dealer manager, is a partner, director or officer, unless the partner, director, officer or employee

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

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

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

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

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

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

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

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

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

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

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

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

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

**19.** Section 4.3 of the Regulation is amended:

(1) in paragraph (1):

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

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

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

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

**20.** Section 4.4 of the Regulation is amended:

(1) in paragraph (1):

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

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

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

(2) in paragraph (2):

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

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

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

(3) in paragraph (3):

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

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

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

(5) in paragraph (5):

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

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

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

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

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

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

**“5.1. Matters Requiring Securityholder Approval**

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

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

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

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

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

(d) *(paragraph revoked)*

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

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

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

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

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

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

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

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

(h) the investment fund implements a change that restructures the investment fund from

(i) a non-redeemable investment fund into a mutual fund;

- (ii) a mutual fund into a non-redeemable investment fund; or
- (iii) an investment fund into an issuer that is not an investment fund.

(2) An investment fund must not bear any of the costs or expenses associated with a change referred to in subparagraphs (1)(h)(i), (ii) or (iii).

## **“5.2. Approval of Securityholders**

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

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

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

## **“5.3. Circumstances in Which Approval of Securityholders Not Required**

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

(a) if

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

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

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

(b) if

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

(ii) the prospectus of the investment fund discloses that securityholders will be sent a written notice at least 60 days before the effective date of a change that is to be made that could result in an increase in charges to the investment fund, and

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

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

(a) all of the following apply:

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

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

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

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

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

(b) all of the following apply:

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

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

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

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

(D) a reporting issuer in the local jurisdiction and 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) there is no market through which securityholders of the investment fund may sell securities of the investment fund during the existence of the investment fund;

(v) the 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 by 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).

(3) 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 subparagraph 5.1(1)(h)(i) if all of the following conditions apply:

(a) the prospectus of the investment fund contains a description of the change and the event that will cause the change to occur;

(b) the prospectus of the investment fund discloses that, although the approval of securityholders will 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;

(c) the notice referred to in paragraph (b) is sent 60 days before the effective date of the change;

(d) each sales communication of the investment fund discloses that

(i) if the event that causes the change occurs, the investment fund will become a mutual fund,

(ii) if applicable, the investment strategies of the investment fund will change after the investment fund becomes a mutual fund,

(iii) if applicable, the securities of the investment fund will not be listed on the stock exchange on which they trade as a result of the change, and

(iv) additional information regarding the change is available in the prospectus of the investment fund.”.

**22.** Section 5.3.1 of the Regulation is amended:

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

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

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

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

**23.** Section 5.4 of the Regulation is amended:

(1) by replacing, in paragraph (1), the words “a mutual fund” with the words “an investment fund” and the words “section 5.1 shall” with the words “subsection 5.1(1) must”;

(2) in paragraph (2):

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

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

**24.** Section 5.5 of the Regulation is amended:

(1) in paragraph (1):

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

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

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

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

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

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

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

(2) by deleting paragraph (2).

**25.** The title of section 5.6 of the Regulation is replaced, in the French text, with the following:

**“5.6. Les restructurations et transferts agréés”.**

**26.** Section 5.6 of the Regulation is amended:

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

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

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

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

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

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

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

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

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

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

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

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

(e) the transaction is approved

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

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

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

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

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

(iii) a statement that securityholders may obtain all of the following documents in respect of the reorganized investment fund at no cost by contacting the reorganized investment fund at an address or telephone number specified in the statement, or by accessing the documents at a website address specified in the statement:

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

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

document;

(C) if applicable, the most recently filed fund facts

financial statements;

(D) the most recently filed annual and interim

management reports of fund performance;

(E) the most recently filed annual and interim

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

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

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

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

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

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

(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.

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

(2) by deleting paragraph (2).

**27.** Section 5.7 of the Regulation is amended:

(1) in paragraph (1):

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

(b) in subparagraph (a):

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

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

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

(d) in subparagraph (b):

(i) by replacing, in subparagraph (ii), the words “each of the mutual funds” with the words “the investment fund and the other issuer”;

(ii) by replacing subparagraph (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”;

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

(2) in subparagraph (2):

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

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

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

(3) in paragraph (3):

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

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

(c) in subparagraph (b):

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

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

**28.** Section 5.8 of the Regulation is amended:

(1) in paragraph (1):

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

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

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

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

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

**“5.8.1. Termination of Non-Redeemable Investment Fund**

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

(2) A non-redeemable investment fund must be terminated no earlier than 15 days and no later than 30 days after the filing of the news release referred to in subsection (1).

(3) Subsections (1) and (2) do not apply to a non-redeemable investment fund that ceases to continue under a transaction referred to in paragraph 5.1(1)(f).”.

**30.** Section 6.1 of the Regulation is replaced with the following:

**“6.1. General**

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

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

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

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

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

(a) where the appointment is by the custodian, the investment fund gives written consent to each appointment;

(a.1) where the appointment is by a sub-custodian, the investment fund and the custodian of the investment fund give written consent to each appointment;

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

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

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

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

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

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

**31.** Section 6.2 of the Regulation is amended:

(1) by replacing the part preceding point 1 with the following:

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

(2) by deleting, in point 2, the word “shareholders”;

(3) in point 3:

(a) by deleting, in subparagraph (a), the word “shareholders”;

(b) by replacing, in subparagraph (b), the words “in respect of that mutual fund” with the words “for that investment fund”.

**32.** Section 6.3 of the Regulation is amended:

(1) by replacing the part preceding point 1 with the following:

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

(2) by deleting, in subparagraph (c) of point 2, the word “shareholders”;

(3) in point 3:

(a) by deleting, in subparagraph (a), the word “shareholders”;

(b) by replacing, in subparagraph (b), the words “in respect of that mutual fund” with the words “for that investment fund”.

**33.** Sections 6.4 and 6.5 of the Regulation are replaced with the following:

**“6.4. Contents of Custodian and Sub-Custodian Agreements**

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

(a) the location of portfolio assets;

(b) any appointment of a sub-custodian;

(c) a list of all sub-custodians;

- (d) the method of holding portfolio assets;
- (e) the standard of care and responsibility for loss; and
- (f) review and compliance reports.

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

(2.1) The provisions of an agreement referred to under subsections (1) or (2) must comply with the requirements of this Part.

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

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

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

#### **“6.5. Holding of Portfolio Assets and Payment of Fees**

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

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

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

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

(5) An investment fund must not pay a fee to the custodian or a sub-custodian 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.”.

**34.** Section 6.6 of the Regulation is amended:



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

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

(3) by replacing, in paragraph (3), the words “A mutual fund” with the words “An investment fund”, the words “a custodian or sub-custodian” with the words “the custodian or a sub-custodian”, and the words “the mutual fund” with the words “the investment fund”;

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

**35.** Section 6.7 of the Regulation is amended:

(1) in paragraph (1):

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

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

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

(2) in paragraph (2):

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

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

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

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

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

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

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

**36.** Section 6.8 of the Regulation is amended:

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

(2) in paragraph (2):

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

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

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

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

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

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

**37.** Section 6.9 of the Regulation is replaced with the following:

**“6.9. Separate Account for Paying Expenses**

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

**38.** Section 7.1 of the Regulation is amended:

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

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

(2) by replacing, in subparagraphs (i) and (ii) of paragraph (a), the words “mutual fund” with the words “investment fund”;

(3) by replacing, in paragraphs (b) and (c), the words “mutual fund” with the words “investment fund”.

**39.** Section 7.2 of the Regulation is amended by replacing, wherever they occur, the words “mutual fund” with the words “investment fund”, and making the necessary changes.

**40.** Section 8.1 of the Regulation is amended by replacing, in the part preceding subparagraph (a), the word “shall” with the word “may”.

**41.** Section 9.0.1 of the Regulation is replaced with the following:

**“9.0.1. Application**

This Part, other than subsections 9.3(2) and (3), does not apply to an exchange-traded mutual fund that is not in continuous distribution.”.

42. Section 9.1 of the Regulation is amended:

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

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

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

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

**“9.3. Issue Price of Securities**

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

(2) The issue price of a security of an exchange-traded mutual fund that is not in continuous distribution or a non-redeemable investment fund must not be a price that is less than the net asset value per security of that class, or series of a class, determined on the date of issuance.

(3) Despite subsection (2), if the securities of an exchange-traded mutual fund that is not in continuous distribution or a non-redeemable investment fund are distributed under a prospectus, the issue price of each security 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; and

(b) be a price that is less than the net asset value per security of that class, or series of a class, determined on the date that is one business day before the date of the prospectus.”.

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

**“PART 9.1 WARRANTS AND SPECIFIED DERIVATIVES**

**9.1.1. Issuance of Warrants or Specified Derivatives**

An investment fund must not issue conventional warrants or rights, or a specified derivative the underlying interest of which is a security of the investment fund.”.

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

46. Section 10.1 of the Regulation is amended:

(1) in paragraph (1):

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

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

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

(c) in subparagraph (b):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**47.** Section 10.3 of the Regulation is amended:

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

(2) by replacing, in paragraph (3), the word “calculated” with the word “computed”;

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

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

**48.** Section 10.4 of the Regulation is amended:

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

“(1.1) Despite subsection (1), an exchange-traded mutual fund that is not in continuous distribution must pay the redemption proceeds for securities that are the subject of a redemption order no later than 15 business days after the valuation date on which the redemption price was established.

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

(2) by replacing, in paragraph (2), the words “of a security” with the words “for a redeemed security” and the word “shall” with the word “must”;

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

(4) in paragraph (5):

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

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

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

**49.** Section 10.6 of the Regulation is amended:

(1) in paragraph (1):

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

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

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

(2) by replacing, in paragraph (2), the words “A mutual fund” with the words “An investment fund” and “10.4(1)” with “10.4(1), (1.1) or (1.2)”;

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

50. Section 11.1 of the Regulation is amended:

(1) by replacing the title with the following:

**“11.1. Principal Distributors and Service Providers”;**

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

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

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

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

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

(3) in paragraph (3):

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

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

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

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

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

(4) in paragraph (4):

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

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

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

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

fund held in the trust account against amounts held in the trust account for investment in the investment fund.”.

**51.** Section 11.3 of the Regulation is amended:

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

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

(2) in subparagraph (a):

(a) by inserting, in subparagraph (iii) and after the words “participating dealer”, “, or a person providing services to the investment fund”;

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

**52.** Section 11.4 of the Regulation is amended by deleting, in paragraph (1), the words “or The Montreal Exchange”.

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

**“PARTIE 14 LA DATE DE CLÔTURE DES REGISTRES”.**

**54.** Section 14.0.1 of the Regulation is replaced with the following:

**“14.0.1 Application**

This Part does not apply to

(a) an exchange-traded mutual fund; or

(b) a non-redeemable investment fund if its securities are listed or quoted on an exchange.”.

**55.** Section 14.1 of the Regulation is amended:

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

**“14.1. La date de clôture des registres”;**

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

“The record date for determining the right of securityholders of an investment fund to receive a dividend or distribution by the investment fund must be one of”;

(3) by replacing, in subparagraphs (b) and (c), the words “mutual fund” with the words “investment fund”.

**56.** Section 15.1 of the Regulation is replaced with the following:

**“15.1. Ability to Make Sales Communications**

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

**57.** Section 15.2 of the Regulation is amended:

(1) in paragraph (1):

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

(b) in subparagraph (b):

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

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

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

**58.** Section 15.3 of the Regulation is amended:

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

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

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

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

(4) in paragraph (5):

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

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

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

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

**59.** Section 15.4 of the Regulation is amended:

(1) in paragraph (1):

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

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



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

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

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

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

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

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

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

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

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

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

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

(7) by replacing, in paragraphs (7), (8) and (9), the word “shall” with the word “must”;

(8) in paragraph (10):

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

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

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

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

**60.** Section 15.5 of the Regulation is amended:

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

- (2) in paragraph (2):

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

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

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

**61.** Section 15.6 of the Regulation is replaced with the following:

**“15.6. Performance Data - General Requirements**

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

- (a) one of the following subparagraphs applies:

- (i) in the case of a mutual fund,

(A) the mutual fund has distributed securities under a prospectus in a jurisdiction for 12 consecutive months; or

(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;

(i.1) 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;

(i.2) 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;

(ii) if the sales communication pertains to an investment fund or asset allocation service that does not satisfy subparagraph (a)(i), (i.1), or (i.2), the sales communication is sent only to

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

(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; or

(iii) before the asset allocation service commenced operation.

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

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

**“15.7.1. Advertisements for Non-Redeemable Investment Funds**

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

**63.** Section 15.8 of the Regulation is amended:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**65.** Section 15.10 of the Regulation is amended:

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

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

(2) in paragraph (2):

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

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

- (a) for a money market fund
  - (i) the current yield; or
  - (ii) the current yield and effective yield, if the effective yield is reported in a type size that is at least equal to that of the current yield; and
- (b) for any investment fund other than a money market fund, the total return; and”;

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

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

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

- (4) in paragraph (4):

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

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

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

“b) “redeemable value” =

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

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

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

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

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

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

- (6) in paragraph (6):

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

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

**66.** Section 15.11 of the Regulation is amended:

(1) in paragraph (1):

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

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

(c) by replacing point 4 with the following:

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

(d) by replacing point 6 with the following:

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

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

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

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

**67.** Section 15.13 of the Regulation is replaced with the following:

**“15.13. Prohibited Representations**

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

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

**68.** Section 18.1 of the Regulation is amended:

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

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

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

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

**69.** Section 18.2 of the Regulation is replaced with the following:

**“18.2. Availability of Records**

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

(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; or

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

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

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

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

**70.** Section 19.3 of the Regulation is replaced with the following:

**“19.3. Revocation of Exemptions**

(1) A mutual fund that has obtained an exemption or waiver from, or approval under, National Policy Statement No. 39 or this Regulation before December 31, 2003, that relates to a mutual fund investing in other mutual funds, may no longer rely on the exemption, waver or approval as of Decembre 31, 2004.

(2) In British Columbia, subsection (1) does not apply.”.

**71.** Section 20.4 of the Regulation is amended by deleting, in paragraph (b), the word “simplified”.

**72.** Sections 20.2, 20.3 and 20.5 of the Regulation are repealed.

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

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

## JURISDICTION

## SECURITIES LEGISLATION REFERENCE

All Jurisdictions

Section 13.6 of *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations*

Newfoundland and Labrador

Section 191 of Reg 805/96’.

**74.** The Regulation is amended by replacing, wherever they occur in sections 2.6.1, 2.7 to 2.9, 2.14 to 2.16, 4.2, 5.9, 6.8.1, 11.5 and 15.14, the words “mutual fund” with the words “investment fund”, and making the necessary changes.

**73.** The Regulation is amended by replacing, wherever it occur in sections 2.7, 2.8, 2.10, 2.15, 2.16, 3.2, 4.2, 9.1, 9.4, 10.2, 10.5, 11.2, 11.5, 12.1, 15.7, 15.12, 15.14 and 19.2, the word “shall with the word “must”.

### **74. Transition and coming into force**

(1) Subject to subsections (2) to (4), this Regulation comes into force on (*insert here the date of coming into force of this Regulation*).

(2) For a non-redeemable investment fund that has filed a prospectus on or before ●, sections 5 to 8, 38 and 39 of this Regulation come into force on the day that is 18 months after the day referred to in subsection (1).

(3) Despite any requirements to the contrary in this Regulation, sales communications, other than advertisements, that were printed before ● may be used until the day that is six months after the day referred to in subsection (1).

(4) Subsection 46(3) of this Regulation comes into force at the beginning of the first calendar year beginning after the day referred to in subsection (1).