

## REGULATION TO AMEND REGULATION 81-102 RESPECTING INVESTMENT FUNDS

Securities Act

(chapter V-1.1, s. 331.1, par. (1), (3), (11), (14), (16), (17) and (34))

1. Section 1.1 of Regulation 81-102 respecting Investment funds (chapter V-1.1, r. 39) is amended:

(1) by deleting the definition of the expression “acceptable clearing corporation”;

(2) by inserting, after the definition of the expression “advertisement”, the following:

““alternative fund” means a mutual fund that has adopted fundamental investment objectives that permit it to invest in asset classes or adopt investment strategies that are otherwise prohibited but for prescribed exemptions from Part 2 of this Regulation;”;

(3) in the French text of the definition of “cash equivalent”:

(a) by replacing, in paragraph (b), the words “pour autant que” with the words “pourvu que” and the words “a une notation” with the words “ait une notation”;

(b) by replacing, in paragraph (c), the words “pour autant que” with the words “pourvu que” and the words “ont une notation” with the words “aient une notation”;

(4) by inserting, after the definition of the expression “cash equivalent”, the following:

““cleared specified derivative” means a specified derivative that is cleared through a clearing corporation that is any of the following:

(a) registered with the Securities and Exchange Commission;

(b) registered with the US Commodity Futures Trading Commission;

(c) authorized by the European Securities and Markets Authority; or

(d) a regulated clearing agency;”;

(5) by replacing, in the definition of the expression “clearing corporation”, the words “options or standardized futures” with the words “specified derivatives”;

(6) by replacing, in the part preceding subparagraph (a) of the French text of the definition of the expression “designated rating”, the words “pour autant que” with the words “pourvu que”;

(7) by deleting the definition of the expression “fixed portfolio ETF”;

(8) by inserting, after the definition of the expression “fixed portfolio ETF”, the following:

““fixed portfolio investment 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 the securities referred to in paragraph (a) only in the circumstances disclosed in its prospectus;”;

- (9) in the definition of the expression “illiquid asset”:
- (a) by replacing, in paragraph (a), the words “mutual fund” with the words “investment fund”;
  - (b) by replacing paragraph (b) with the following:
    - “(b) a restricted security held by an investment fund;”;
- (10) by deleting the definition of the expression “Joint Regulatory Financial Questionnaire and Report”;
- (11) by inserting, after the definition of the expression “net asset value”, the following:  
““non-redeemable investment fund” has the same meaning ascribed to that term in Regulation 81-106 respecting Investment Fund Continuous Disclosure;”;
- (12) by deleting the definition of the expression “permitted gold certificate”;
- (13) by inserting, after the definition of the expression “permitted index”, the following:  
““permitted precious metals” means gold, silver, platinum and palladium;  
“permitted precious metal certificate” means a certificate representing a permitted precious metal if the permitted precious metal is
- (a) available for delivery in Canada, free of charge, to or to the order of the holder of the certificate,
  - (b) in the case of a certificate representing gold, of a minimum fineness of 995 parts per 1000,
  - (c) in the case of a certificate representing a permitted precious metal other than gold, of a minimum fineness of 999 parts per 1000,
  - (d) held in Canada,
  - (e) in the form of either bars or wafers, and
  - (f) if not purchased from a bank listed in Schedule, I, II or III of the Bank Act (R.S.C., c. 46), fully insured against loss and bankruptcy by an insurance company licensed under the laws of Canada or a jurisdiction;”;
- (14) by inserting, in the definition of the expression “physical commodity” and before the words “precious stone”, the words “electricity, water,”;
- (15) by inserting, after the definition of the expression “portfolio asset”, the following:  
““precious metals fund” means a mutual fund, other than an alternative fund, that has adopted a fundamental investment objective to invest primarily in one or more permitted precious metals;”;
- (16) by replacing, wherever they appear in the definition of the expression “public quotation”, the words “mutual fund” with the words “investment fund”;
- (17) by replacing, wherever they appear in the French text of the definition of the expression “qualified security”, the words “pour autant que” with the words “pourvu que”;
- (18) by inserting, after the definition of the expression “qualified security”, the following:

““regulated clearing agency” has the meaning ascribed to that term in Regulation 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives (*insert the reference*);”;

(19) by replacing, in the definition of the expression “restricted security”, the words “mutual fund” with the words “investment fund” and the words “mutual fund’s” with the words “investment fund’s”;

(20) by replacing, wherever they appear in the French text of the definition of the expression “synthetic cash”, the words “pour autant que sont” with the words “pourvu que soient”.

2. Section 1.2 of the Regulation is amended by replacing, in subparagraph (a) of paragraph (3), “sections 2.12 to 2.17;” with “section 2.6.1 and sections 2.7 to 2.17;”.

3. Section 2.1 of the Regulation is amended:

(1) by inserting, in paragraph (1), the words « other than an alternative fund” after the words “mutual fund”, by replacing the words “index participation units” with the words “an index participation unit” and inserting the word “one” after the word “any”;

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

“(1.1) An alternative fund or a non-redeemable investment fund must not purchase a security of an issuer, enter into a specified derivatives transaction or purchase an index participation unit if, immediately after the transaction, more than 20% of its net asset value would be invested in securities of any one issuer.”;

(3) in paragraph (2):

(a) by replacing, in the part preceding subparagraph (a), the words “Subsection (1) does” with the words “Subsections (1) and (1.1) do”;

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

(c) by replacing, in subparagraph (e), the words “fixed portfolio ETF” with the words “fixed portfolio investment fund”;

(4) by replacing, in paragraph (3), the words “a mutual fund’s” with the words “an investment fund’s” and, wherever they appear, the words “the mutual fund” with the words “the investment fund”;

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

4. Section 2.3 of the Regulation is amended:

(1) in paragraph (1):

(a) by replacing, in the French text of subparagraph (c), the word “constituée” with the word “constitué”;

(b) by replacing subparagraphs (d) and (e) with the following:

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

“(e) purchase permitted precious metals, a permitted precious metal certificate or a specified derivative the underlying interest of which is a physical commodity, if, immediately after the purchase, more than 10% of the mutual fund’s net asset value would be

made up of permitted precious metals, permitted precious metal certificates and specified derivatives the underlying interest of which is a physical commodity;”;

(c) by deleting subparagraph (h), and making the necessary changes;

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

“(1.1) Paragraphs 1(d), (e), (f) and (g) do not apply to an alternative fund.

“(1.2) The restriction in paragraph 1(e) does not apply to a precious metals fund with respect to purchasing permitted precious metals, a permitted precious metal certificate or a specified derivative the underlying interest of which is one or more permitted precious metals.”;

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

“(3) In determining an investment fund’s compliance with the restrictions contained in this section, 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 or underlying investment fund held by the investment fund, the investment fund must consider that it holds directly the underlying interest of that specified derivative or its proportionate share of the securities held by the issuer of the index participation unit or underlying investment fund, as applicable.

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

(a) a stock or bond index that is the underlying interest of a specified derivative, or

(b) the securities held by the issuer of an index participation unit.”.

**5.** Section 2.4 of the Regulation is amended:

(1) by replacing, in the French text of paragraph (2), “90 jours et plus” by “90 jours ou plus”;

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

“(4) A non-redeemable investment fund must not purchase an illiquid asset if, immediately after the purchase, more than 20% of its net asset value would be made up of illiquid assets.

“(5) A non-redeemable investment fund must not have invested, for a period of 90 days or more, more than 25% of its net asset value in illiquid assets.

“(6) If more than 25% of the net asset value of a non-redeemable investment fund is made up of illiquid assets, the non-redeemable fund must, as quickly as commercially reasonable, take all necessary steps to reduce the percentage of its net asset value made up of illiquid assets to 25% or less.”.

**6.** Section 2.5 of the Regulation is amended:

(1) in paragraph (2):

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

“(a) if the investment fund is a mutual fund other than an alternative fund, either of the following apply:

(i) the other investment fund is a mutual fund other than an alternative fund, that is subject to this Regulation;

(ii) the other investment fund is an alternative fund or a non-redeemable investment fund that is subject to this Regulation, provided that the mutual fund must not purchase securities of the alternative fund or non-redeemable investment fund if, immediately after the purchase, more than 10% of its net asset value would be made up of securities of alternative funds and non-redeemable investment funds;”;

(b) in subparagraph (a.1):

(i) by inserting, in the part preceding subparagraph (i) and before the words “a non-redeemable investment fund”, the words “an alternative fund or”;

(ii) by inserting, in subparagraph (ii) and before the words “a non-redeemable investment fund”, the words “an alternative fund or”;

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

“(c) the other investment fund is a reporting issuer in a jurisdiction;”;

(d) by deleting paragraph (c.1);

(2) by replacing, in paragraph (3), “, (c) and (c.1)” with “and (c)”.

7. Section 2.6 of the Regulation is replaced with the following:

**“2.6. Investment Practices**

(1) An investment fund must not

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

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

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

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

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

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

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

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

- (e) engage in the business of underwriting, or marketing to the public, securities of any other issuer;
- (f) lend cash or portfolio assets other than cash;
- (g) guarantee securities or obligations of a person; or
- (h) purchase securities other than through market facilities through which these securities are normally bought and sold unless the purchase price approximates the prevailing market price or the parties are at arm's length in connection with the transaction.

(2) An alternative fund or a non-redeemable investment fund may borrow cash in excess of the limits set out in subsection (1) provided that each of the following applies:

- (a) the alternative fund or non-redeemable investment fund may only borrow from an entity described in section 6.2;
- (b) if the lender is an affiliate of the investment fund manager of the alternative fund or non-redeemable investment fund, the independent review committee must approve the applicable borrowing agreement under subsection 5.2(1) of Regulation 81-107 respecting Independent Review Committee for Investment Funds (chapter V-1.1, r. 43);
- (c) the borrowing agreement entered into is in accordance with normal industry practice and on standard commercial terms for the type of transaction;
- (d) the total value of cash borrowed must not exceed 50% of the alternative fund or non-redeemable investment fund's net asset value."

**8.** Section 2.6.1 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";
  - (b) by replacing, in subparagraph (i) of subparagraph (b), the words "mutal fund" with the words "investment fund";
  - (c) by replacing subparagraph (c) with the following:
    - “(c) at the time the investment fund sells the security short,
      - (i) the investment fund has borrowed or arranged to borrow from a borrowing agent the security that is to be sold under the short sale;
      - (ii) if the investment fund is a mutual fund other than an alternative fund, the aggregate market value of all securities of the issuer of the securities sold short by the mutual fund does not exceed 5% of the net asset value of the mutual fund;
      - (iii) if the investment fund is a mutual fund other than an alternative fund, the aggregate market value of all securities sold short by the mutual fund does not exceed 20% of the net asset value of the mutual fund;
      - (iv) if the investment fund is an alternative fund or a non-redeemable investment fund, the aggregate market value of all securities of the issuer of the securities sold short by the investment fund does not exceed 10% of the net asset value of the investment fund; and
      - (v) if the investment fund is an alternative fund or a non-redeemable investment fund, the aggregate market value of all securities sold short by the investment fund does not exceed 50% of the net asset value of the investment fund.”;

(2) by inserting, in paragraphs (2) and (3) and after the words “A mutual fund”, the words “other than an alternative fund”.

9. The Regulation is amended by adding, after section 2.6.1, the following:

**“2.6.2. Total Borrowing and Short Selling**

(1) Despite sections 2.6 and 2.6.1, an investment fund must not borrow cash or sell securities short, if immediately after entering into a cash borrowing or short selling transaction, the aggregate value of cash borrowed combined with the aggregate market value of all securities sold short by the investment fund would exceed 50% of the investment fund’s net asset value.

(2) Despite sections 2.6 and 2.6.1, if the aggregate value of cash borrowed combined with the aggregate market value of all securities sold short by the investment fund exceeds 50% of the investment fund’s net asset value, the investment fund must, as quickly as is commercially reasonable, take all necessary steps to reduce the aggregate value of cash borrowed combined with the aggregate market value of securities sold short to 50% or less of the investment fund’s net asset value.”.

10. Section 2.7 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”;

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

“(d) the option, debt-like security, swap or contract is a cleared specified derivative.”;

(2) by replacing, in paragraph (2), the words “a mutual fund” with the words “an investment fund” and the words “the mutual fund” with the words “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 mark-to-market value of the exposure of an investment fund under its specified derivatives positions other than for positions in cleared specified derivatives, with any one counterparty calculated in accordance with subsection (5), must not exceed, for a period of 30 days or more, 10% of the net asset value of the investment fund.”;

(5) in paragraph (5):

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

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

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

(6) by adding, after paragraph (5), the following:

“(6) Subsections (1), (2) and (3) do not apply to an alternative fund or a non-redeemable investment fund.”.

11. Section 2.8 of the Regulation is amended by inserting, before paragraph (1), the following:

“(0.1) This section does not apply to an alternative fund.”.

**12.** The Regulation is amended by inserting, after section 2.9, the following:

**“2.9.1. Leverage**

(1) An investment fund’s aggregate gross exposure must not exceed 3 times the investment fund’s net asset value.

(2) For the purposes of subsection (1), an investment fund’s aggregate gross exposure must be calculated as the sum of the following, divided by the investment fund’s net asset value:

(a) the aggregate value of the investment fund’s indebtedness under any borrowing agreements entered into pursuant to section 2.6;

(b) the aggregate market value of all securities sold short by the investment fund pursuant to section 2.6.1;

(c) the aggregate notional amount of the investment’s fund’s specified derivatives positions.

(3) In determining an investment fund’s compliance with the restriction contained in this section, the investment fund must also include in its calculation its proportionate shares of securities of any underlying investment funds for which a similar calculation is required.

(4) An investment fund must determine its compliance with the restriction contained in this section as of the close of business of each day on which the investment fund calculates a net asset value.

(5) If the investment fund’s aggregate gross exposure as determined in subsection (2) exceeds 3 times the investment fund’s net asset value, the investment fund must, as quickly as is commercially reasonable, take all necessary steps to reduce the aggregate gross exposure to 3 times the investment fund’s net asset value or less.”.

**13.** Section 2.11 of the Regulation is amended by inserting, before paragraph (1), the following:

“(0.1) This section does not apply to an alternative fund.”.

**14.** Section 2.12 of the Regulation is amended, in the French text of subparagraph (d) of subparagraph 6 of paragraph (1), by replacing the words “pour autant que” with the words “pourvu que”.

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

(1) by replacing the title with the following:

**“6.8. Custodial Provisions relating to Borrowing, Derivatives and Securities Lending, Repurchase and Reverse Repurchase Agreements”;**

(2) by replacing, in paragraph (1), the words “clearing corporation options, options on futures or standardized futures” with the words “cleared specified derivatives”;

(3) in paragraph (2):

(a) by replacing, in the part preceding subparagraph (a), the words “clearing corporation options, options or futures or standardized futures” with the words “cleared specified derivatives”;

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



“(a) the dealer is a member of a futures exchange or is a member of a stock exchange, and, as a result in either case, is subject to a regulatory audit;”;

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

“(3.1) An investment fund may deposit with its lender, portfolio assets over which it has granted a security interest in connection with a borrowing agreement entered into pursuant to section 2.6.”;

(5) by replacing, in paragraph (4), “or (3)” with “, (3) or (3.1)”;

(6) by inserting, in paragraph (5) and before the words “securities lending”, “borrowing,”.

**16.** Section 7.1 of the Regulation is replaced with the following:

**“7.1. Incentive Fees**

(1) A mutual fund other than an alternative fund must not pay, or enter into arrangements that would require it to pay, and securities of a mutual fund must not be sold on the basis that an investor would be required to pay, a fee that is determined by the performance of the mutual fund, unless

(a) the fee is calculated with reference to a benchmark or index that

(i) reflects the market sectors in which the mutual fund invests according to its fundamental investment objectives,

(ii) is available to persons other than the mutual fund and persons providing services to it, and

(iii) is a total return benchmark or index;

(b) the payment of the fee is based upon a comparison of the cumulative total return of the mutual fund against the cumulative total percentage increase or decrease of the benchmark or index for the period that began immediately after the last period for which the performance fee was paid; and

(c) the method of calculation of the fee and details of the composition of the benchmark or index are described in the prospectus of the mutual fund.

(2) An alternative fund must not pay, or enter into arrangements that would require it to pay, and securities of an alternative 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 alternative fund unless

(a) the payment of the fee is based on the cumulative total return of the alternative fund for the period that began immediately after the last period for which the performance fee was paid, and

(b) the method of calculating the fee is described in the alternative fund’s prospectus.”.

**17.** Section 9.1.1 of the Regulation is amended, in paragraph (b), by inserting the word “short” before the word “position”.

**18.** Section 9.4 of the Regulation is amended by replacing, in the French text of subparagraph (b) of paragraph (2), the words “pour autant que sont” with the words “pourvu que soient”.

**19.** Section 10.1 of the regulation is amended by inserting, after paragraph (2), the following:

“(2.1) If disclosed in its prospectus, an alternative fund may include, as part of the requirements established in subsection (2), a provision that securityholders of the alternative fund will not have the right to redeem their securities for a period up to 6 months after the date on which the receipt is issued for the initial prospectus of the alternative fund.”.

**20.** Section 10.3 of the Regulation is amended by adding, after paragraph (4), the following:

“(5) Despite subsection (1) an alternative fund may implement a policy providing that a person making a redemption order for securities of the alternative fund will receive the net asset value for those securities determined, as provided in the policy, on the first or 2<sup>nd</sup> business day after the date of receipt by the alternative fund of the redemption order.”.

**21.** Section 10.4 of the Regulation is amended by inserting, in paragraph (1.1) and after the words “Despite subsection (1),”, the words “an alternative fund or”.

**22.** Section 15.13 of the Regulation is amended, in paragraph (2), by replacing, wherever they appear, the words “a commodity pool” with the words “an alternative fund”, and by replacing the words “Regulation 81-104 respecting Commodity Pools (chapter V-1.1, r. 40)” with the words “this Regulation”.

**23.** Section 19.2 of the Regulation is amended by replacing, in the French text of paragraph (2), the words “pour autant que” with the words “pourvu que” and the words “sont décrites” with the words “soient décrites”.

**24.** The Regulation is amended by repealing Appendix A.

**25.** (1) Subject to subsections (2) and (3), this Regulation comes into force on (*indicate here the date of coming into force of this Regulation*).

(2) If a non-redeemable investment fund or alternative fund has filed a prospectus before •, then this Regulation will not apply to that non-redeemable investment fund or alternative fund until the date that is 6 months from the date referred to in subsection (1).

(3) A mutual fund that is a commodity pool under Regulation 81-104 respecting Commodity Pools (chapter V-1.1, r. 40) and has filed a prospectus before the date of this Instrument will be deemed to be an alternative fund for the purposes of subsection (2).