

M.O., 2018-06**Order number V-1.1-2018-06 of the Minister
of Finance dated 3 December 2018**

Securities Act
(chapter V-1.1)

CONCERNING the Regulation to amend Regulation 81-102 respecting Investment Funds

WHEREAS subparagraphs 1, 3, 11, 14, 16, 17 and 34 of section 331.1 of the Securities Act (chapter V-1.1) stipulate that the *Autorité des marchés financiers* may make regulations concerning the matters referred to in those paragraphs;

WHEREAS the third and fourth paragraphs of section 331.2 of the said Act stipulate that a draft regulation shall be published in the Bulletin of the Authority, accompanied with the notice required under section 10 of the Regulations Act (chapter R-18.1) and may not be submitted for approval or be made before 30 days have elapsed since its publication;

WHEREAS the first and fifth paragraphs of the said section stipulate that every regulation made under section 331.1 must be approved, with or without amendment, by the Minister of Finance and comes into force on the date of its publication in the *Gazette officielle du Québec* or any later date specified in the regulation;

WHEREAS the Regulation 81-102 respecting Investment Funds was made by decision no. 2001-C-0209 dated May 22, 2001 (*Bulletin hebdomadaire*, vol. 32, no. 22, dated June 1, 2001);

WHEREAS there is cause to amend these regulation;

WHEREAS the draft Regulation to amend Regulation 81-102 respecting Investment Funds was published in the *Bulletin de l'Autorité des marchés financiers*, vol. 13, no. 38 of September 22, 2016;

WHEREAS the Authority made, on December 14, 2018, by the decision no. 2018-PDG-0072, Regulation to amend Regulation 81-102 respecting Investment Funds;

WHEREAS there is cause to approve these regulation without amendment;

CONSEQUENTLY, the Minister of Finance approves without amendment the Regulation to amend Regulation 81-102 respecting Investment Funds appended hereto.

December 3, 2018

ERIC GIRARD,
Minister of Finance

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 mutual fund” means a mutual fund, other than a precious metals fund, that has adopted fundamental investment objectives that permit it to invest in physical commodities or specified derivatives, to borrow cash or engage in short selling in a manner not permitted for other mutual funds under this Regulation;”;

(3) by replacing, wherever they appear in the definition of the expression “cash cover”, the words “mutual fund” with the words “investment fund”, and making the necessary grammatical adaptations;

(4) 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”;

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

““cleared specified derivative” means a bilateral specified derivative that is accepted for clearing by a regulated clearing agency;”;

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

(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 that 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 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 metal” means gold, silver, platinum or palladium;

““permitted precious metal certificate” means a certificate representing a permitted precious metal if the permitted precious metal is held in Canada in the form of bars or wafers and 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 silver, platinum or palladium, of a minimum fineness of 999 parts per 1000, and

(d) if not purchased from a bank listed in Schedule, I, II or III of the Bank Act (R.S.C. 1991, 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 after the word “, means”, the words “electricity, water, or,”;

(15) by inserting, after the definition of the expression “portfolio asset”, the following:

““precious metals fund” means a mutual fund that has adopted a fundamental investment objective to invest primarily in one or more permitted precious metals;”;

(16) by replacing the definition of the expression “public quotation” with the following:

““public quotation” includes, for the purposes of calculating the amount of illiquid assets held by an investment fund, any quotation of a price for any of the following:

- (a) a fixed income security made through the inter-dealer bond market,
- (b) a foreign currency forward or foreign currency option in the interbank market;”;

(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 (chapter I-14.01, r. 0.01);”;

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

(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:

(1) 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;”;

(2) by adding, after paragraph (4), the following:

“(5) Despite paragraph (1)(a.1), the following provisions do not apply to a non-redeemable investment fund that was established before October 4, 2018, unless the fund has filed a prospectus for which a receipt was issued after that date:

- (a) sections 2.1 and 2.4,
- (b) paragraphs 2.6(1)(a), (b) and (c), and subsection 2.6(2), and
- (c) sections 2.6.1, 2.6.2 and 2.9.1.”.

3. Section 2.1 of the Regulation is amended:

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

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

“(1.1) An alternative mutual 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), “Subsection (1) does” with “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), “fixed portfolio ETF” with the words “fixed portfolio investment fund”;

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

“(3) For the purposes of this section, for each long position in a specified derivative that is held by an investment fund for a purpose other than hedging and for each index participation unit held by the investment fund, the investment fund is considered to hold directly the underlying interest of that specified derivative or its proportionate share of the securities held by the issuer of the index participation unit.”;

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

“(4) Despite subsection (3), for the purposes of this section, an investment fund is considered to not hold a security or instrument if that security or instrument is a component of, but 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.”.

4. Section 2.3 of the Regulation is amended:

(1) in paragraph (1):

(a) by inserting, after the words “must not”, the words “do any of the following”;

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

(c) by replacing subparagraphs (d) to (f) with the following:

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

“(e) purchase a permitted precious metal, a permitted precious metal certificate, or a specified derivative of which the underlying interest 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, or specified derivatives of which the underlying interests are physical commodities;

“(f) purchase a physical commodity, except to the extent permitted by paragraph (d) or (e);”;

(d) by deleting subparagraph (h), and making the necessary adaptations;

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

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

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

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

“(3) For the purposes of this section, for each long position in a specified derivative that is held by an investment fund for a purpose other than hedging and for each index participation unit or underlying investment fund held by the investment fund, the investment fund is considered to hold directly the underlying interest of that specified derivative or its proportionate share of the assets held by the issuer of the index participation unit or underlying investment fund.

“(4) Despite subsection (3), for the purposes of this section, an investment fund is considered to not hold a security or instrument if that security or instrument is a component of, but 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 or underlying investment fund.”.

5. Section 2.4 of the Regulation is amended:

(1) by replacing, in paragraph (2), the words “must not have invested,” with the words “must not hold,”;

(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 hold, 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 investment 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 mutual fund, either of the following applies:

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

(ii) the other investment fund is an alternative mutual fund or a non-redeemable investment fund that is subject to this Regulation and, at the time of the purchase of that security, the investment fund holds no more than 10% of its net asset value in securities of alternative mutual funds and non-redeemable investment funds;”;

(b) in subparagraph (a.1):

(i) by inserting, in the part preceding subparagraph (i) and after the words “if the investment fund is”, the words “an alternative mutual fund or”;

(ii) by inserting, in subparagraph (ii) and after the words “applicable to”, the words “an alternative mutual 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), “, (a.1), (c) and (c.1)” with “(a.1) and (c)”;

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

“(5) Paragraphs (2)(e) and (f) do not apply to brokerage fees incurred for the purchase or sale of securities issued by an investment fund that are listed for trading on a stock exchange.”.

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

“2.6. Borrowing and Other 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) Despite paragraphs (1)(a) and (b), an alternative mutual fund or a non-redeemable investment fund may borrow cash or provide a security interest over any of its portfolio assets if each of the following apply:

(a) any borrowing of cash is

(i) from an entity described in section 6.2 or 6.3, and

(ii) if the lender is an affiliate or associate of the investment fund manager of the alternative mutual fund or non-redeemable investment fund, under a borrowing agreement approved by the independent review committee as required under section 5.2 of Regulation 81-107 respecting Independent Review Committee for Investment Funds (chapter V-1.1, r. 43);

(b) the borrowing agreement is in accordance with normal industry practice and on standard commercial terms for the type of transaction;

(c) the value of cash borrowed, when aggregated with the value of all outstanding borrowing by the alternative mutual fund or non-redeemable investment fund, does not exceed 50% of the alternative mutual 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 "mutual 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 mutual fund, the aggregate market value of the 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 mutual fund, the aggregate market value of the 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 mutual fund or a non-redeemable investment fund, the aggregate market value of the securities of the issuer of the securities sold short by the investment fund, other than government securities sold short by an alternative mutual fund or non-redeemable investment fund, does not exceed 10% of the net asset value of the investment fund, and

(v) if the investment fund is an alternative mutual fund or a non-redeemable investment fund, the aggregate market value of the securities sold short by the investment fund does not exceed 50% of the net asset value of the investment fund.”;

(2) by inserting, in paragraph (2) and after the words “A mutual fund”, “, other than an alternative mutual fund,” and by replacing the words “of all securities” with the words “of the securities”;

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

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

“2.6.2. Total Borrowing and Short Sales

(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 the 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 the 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 replacing, in subparagraphs (b) and (c), the word “contract” with the word “forward contract”;

(c) by inserting, after subparagraph (c), the following, and making the necessary adaptations:

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

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

“(2) If the credit rating of an option, debt-like security, swap or forward contract, or the credit rating of the equivalent debt of the writer or guarantor of the option, debt-like security, swap or forward contract, falls below the level of designated rating while the option, debt-like security, swap or forward contract is held by an investment fund, the investment fund must take the steps that are reasonably required to close out its position in the option, debt-like security, swap or forward contract in an orderly and timely fashion, unless either of the following applies:

(a) the option is a clearing corporation option;

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

(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 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 unless either of the following applies:

(a) the specified derivative is a cleared specified derivative;

(b) the equivalent debt of the counterparty, or of a person that has fully and unconditionally guaranteed the obligations of the counterparty in respect of the specified derivative, has a designated rating.”;

(5) by replacing, wherever they appear in paragraph (5), the words “mutual fund” with the words “investment fund”, and making the necessary grammatical adaptations;

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

“(6) Subsections (1), (2) and (3) do not apply to an alternative mutual 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 mutual fund.”.

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

“2.9.1. Aggregate Exposure to Borrowing, Short Selling and Specified Derivatives

(1) An alternative mutual fund or non-redeemable investment fund’s aggregate exposure to cash borrowing, short selling and specified derivatives transactions must not exceed 300% of the fund’s net asset value.

(2) For the purposes of subsection (1), an alternative mutual fund or non-redeemable investment fund’s aggregate exposure is the sum of the following:

(a) the aggregate value of the alternative mutual fund’s or non-redeemable investment fund’s outstanding indebtedness under any borrowing agreements to which subsection 2.6(2) applies,

(b) the aggregate market value of all securities sold short by the alternative mutual fund or non-redeemable investment fund as permitted by section 2.6.1, and

(c) the aggregate notional amount of the alternative mutual fund’s or non-redeemable investment’s fund’s specified derivatives positions, minus the aggregate notional amount of the specified derivative positions that are hedging transactions.

(3) For the purposes of this section the alternative mutual fund or non-redeemable investment fund must include in its calculation its proportionate share of the assets of any underlying investment fund for which a similar calculation is required.

(4) An alternative mutual fund or non-redeemable investment fund must determine its aggregate exposure in accordance with subsection (2) as of the close of business of each day on which it calculates a net asset value.

(5) If the alternative mutual fund or non-redeemable investment fund’s aggregate exposure as determined in accordance with subsection (2) exceeds 300 % of its net asset value, the alternative mutual fund or non-redeemable investment fund must, as quickly as is commercially reasonable, take all necessary steps to reduce the aggregate exposure to 300 % its 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 mutual 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. Sections 6.2 and 6.3 of the Regulation are amended by deleting, in subparagraph (a) of paragraph (3), the words “that have been made public”.

16. 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 paragraphs (1) and (2) with the following:

“(1) An investment fund may deposit portfolio assets as margin for transactions in Canada involving clearing corporation options, options on futures, standardized futures or cleared specified derivatives with a member of a regulated clearing agency or with a dealer that is a member of an SRO that is a participating member of CIPF if the amount of margin deposited does not, when aggregated with the amount of margin already held by the member or dealer on behalf of the investment fund, exceed 10% of the net asset value of the investment funds as at the time of deposit.

“(2) An investment fund may deposit portfolio assets with a member of a regulated clearing agency or with a dealer as margin for transactions outside Canada involving clearing corporation options, options on futures, standardized futures or cleared specified derivatives if

(a) the member or the dealer is a member of a regulated clearing agency, futures exchange or stock exchange, and, as a result in any case, is subject to a regulatory audit,

(b) the member or dealer has a net worth, determined from its most recent audited financial statements, in excess of the equivalent of \$50,000,000, and

(c) the amount of margin deposited does not, when aggregated with the amount of margin already held by the member or dealer on behalf of the investment fund, exceed 10% of the net asset value of the investment funds as at the time of deposit.”;

- (3) 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 to which section 2.6 applies.”;

- (4) by replacing, in paragraph (4), “(2) or (3)” with “(2), (3) or (3.1)”;

(5) by inserting, in paragraph (5) and after the words “obligations under a”, “borrowing,”.

17. Section 6.8.1 of the Regulation is amended:

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

“(1) Unless the borrowing agent is the investment fund’s custodian or sub-custodian, if an investment fund deposits portfolio assets with a borrowing agent as security in connection with a short sale of securities, the market value of portfolio assets deposited with the borrowing agent must not, when aggregated with the market value of portfolio assets already held by the borrowing agent as security for outstanding short sales of securities by the investment fund,

(a) in the case of a mutual fund, other than an alternative mutual fund, exceed 10% of the net asset value of the mutual fund at the time of deposit, and

(b) in the case of an alternative mutual fund or a non-redeemable investment fund, exceed 25% of the net asset value of the alternative mutual fund or non-redeemable investment fund at the time of deposit.”;

(2) by deleting, in subparagraph (b) of paragraph (3), the words “that have been made public”.

18. Section 7.1 of the Regulation is replaced with the following:

“7.1. Incentive Fees

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

(a) the payment of the fee is based on the cumulative total return of the alternative mutual 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 mutual fund's prospectus."

19. 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".

20. Section 9.1.1 of the Regulation is amended, in paragraph (b), by inserting the word "short" after the words "enter into a".

21. Section 10.1 of the Regulation is amended by inserting, after paragraph (2), the following:

"(2.1) If disclosed in its prospectus, an alternative mutual fund may include, as part of the requirements contemplated in subsection (2), a provision that securityholders of the alternative mutual fund may not 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 mutual fund."

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

"(5) Despite subsection (1), an alternative mutual fund may redeem securities of the alternative mutual fund at a price that is equal to the net asset value for those securities determined on the 1st or 2nd business day after the date of receipt by the alternative mutual fund of the redemption order if

(a) the alternative mutual fund has established a policy providing for the redemption price to be calculated on such a basis, and

(b) the policy has been disclosed in the alternative mutual fund's prospectus before the policy's implementation."

23. Section 10.4 of the Regulation is amended by inserting, in paragraph (1.1) and after the words "continuous distribution", the words "an alternative mutual fund or".

24. 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 mutual fund", and by deleting "as defined in Regulation 81-104 respecting Commodity Pools (chapter V-1.1, r. 40)".

25. 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".

26. Appendix A of the Regulation is repealed.
27. Appendix B-1, Appendix B-2 and Appendix B-3 of the Regulation are amended by replacing, wherever they appear, “Regulation 81-102 respecting Mutual Funds” with “Regulation 81-102 respecting Investment Funds”.
28. Appendix F of the Regulation is amended by adding, after paragraph (2) of the commentary of item 1, the following:
- “(3) *In deciding whether to exercise the discretion to increase a mutual fund’s investment risk level as permitted in subsection (2) above, consideration should be given as to whether the standard deviation calculation applied under the Investment Risk Classification Methodology may result in a risk level that is below the manager’s own expectations for the mutual fund. This can occur, for example, when a mutual fund employs investment strategies that produce an atypical or non-normal distribution of performance results. In such circumstances mutual funds are encouraged to consider supplementing the Investment Risk Classification Methodology with other factors or risk metrics in order to determine whether it would be appropriate to make an upward adjustment of the mutual fund’s risk level to better reflect the features of the mutual fund.*”.
29. If a commodity pool, as that term was defined in Regulation 81-104 respecting Commodity Pools (chapter V-1.1, r. 40) on January 2, 2019, has filed a prospectus for which a receipt was granted on or before that date, this Regulation does not apply to that commodity pool until July 4, 2019.
30. This Regulation comes into force on January 3, 2019.

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M.O., 2018-07**Order number V-1.1-2018-07 of the Minister of Finance dated 3 December 2018**Securities Act
(chapter V-1.1)

CONCERNING concordant regulations to Regulation to amend Regulation 81-102 respecting Investment Funds

WHEREAS subparagraphs 1, 3, 6, 8, 11, 14, 16, 17, 19, 20, 26 and 34 of section 331.1 of the Securities Act (chapter V-1.1) provide that the *Autorité des marchés financiers* may make regulations concerning the matters referred to in those paragraphs;

WHEREAS the third and fourth paragraphs of section 331.2 of the said Act provide that a draft regulation shall be published in the *Bulletin de l’Autorité des marchés financiers*, accompanied with the notice required under

section 10 of the Regulations Act (chapter R-18.1) and may not be submitted for approval or be made before 30 days have elapsed since its publication;

WHEREAS the first and fifth paragraphs of the said section provide that every regulation made under section 331.1 must be approved, with or without amendment, by the Minister of Finance and comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation;

WHEREAS the following regulations have been made by the *Autorité des marchés financiers* or approved by the minister of Finance:

— Regulation 41-101 respecting General Prospectus Requirements approved by ministerial order no. 2008-05 dated March 4, 2008 (2008, *G.O.* 2, 810A);