

M.O., 2008-12**Order number V-1.1-2008-12 of the Minister of Finance dated 22 August 2008**

Securities Act
(R.S.Q., c. V-1.1)

CONCERNING Regulation to amend Regulation 81-106 respecting investment fund continuous disclosure

WHEREAS subparagraphs 1, 3, 8, 9, 16, 19 and 34 of section 331.1 of the Securities Act (R.S.Q., c. V-1.1), amended by section 15 of chapter 15 of the statutes of 2007 and by section 170 of chapter 7 of the statutes of 2008, 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 de l'Autorité des marchés financiers*, accompanied with the notice required under section 10 of the Regulations Act (R.S.Q., c. 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 81-106 respecting investment fund continuous disclosure was made by ministerial order 2005-05 dated May 19, 2005 (2005, *G.O.* 2, 1601);

WHEREAS there is cause to amend this regulation;

WHEREAS the draft Regulation to amend Regulation 81-106 respecting investment fund continuous disclosure was published in the *Bulletin de l'Autorité des marchés financiers*, volume 4, no. 22 of June 1st, 2007;

WHEREAS the Authority made, on July 18, 2008, by the decision no. 2008-PDG-0199, Regulation to amend Regulation 81-106 respecting investment fund continuous disclosure;

WHEREAS there is cause to approve this regulation without amendment;

CONSEQUENTLY, the Minister of Finance approves without amendment Regulation to amend Regulation 81-106 respecting investment fund continuous disclosure appended hereto.

August 22, 2008

MONIQUE JÉRÔME-FORGET,
Minister of Finance

Regulation to amend Regulation 81-106 respecting investment fund continuous disclosure*

Securities Act
(R.S.Q., c. V-1.1)

1. Section 1.1 of Regulation 81-106 respecting Investment Fund Continuous Disclosure is amended:

(1) by replacing, in the French text of paragraph (b) of the definition of “changement important”, the words “de sa société de gestion” and “de la société de gestion” with “de son gestionnaire” and “du gestionnaire”, respectively;

(2) by replacing, in the French text of the definition of “frais de gestion”, the words “sa société de gestion” with “son gestionnaire”;

(3) by replacing the definition of “net asset value” with the following:

““net asset value” means the value of the total assets of the investment fund less the value of the total liabilities of the investment fund, as at a specific date, determined in accordance with Part 14;”.

2. Section 2.9 of the Regulation is amended, in paragraph (4):

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

“(i) a statement of net assets as at the end of its old financial year; and”;

* Regulation 81-106 respecting Investment Fund Continuous Disclosure approved by Ministerial Order no. 2005-05 dated May 19, 2005 (2005, *G.O.* 2, 1601), was last amended by the regulation amending that regulation and approved by Ministerial Order No. 2008-10 dated June 17, 2008 (2008, *G.O.* 2, 2569). For previous amendments, refer to the *Tableau des modifications et Index sommaire*, Éditeur officiel du Québec, 2008, updated to March 1, 2008.

(2) by replacing subparagraph (i) of subparagraph (b) with the following:

“(i) a statement of net assets as at the end of the transition year; and”.

3. Section 2.10 of the Regulation is amended:

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

“(a) the investment fund terminating or ceasing to be a reporting issuer;”;

(2) by replacing subparagraph (h) with the following:

“(h) if applicable, the names of each party that terminated or ceased to be a reporting issuer following the transaction and of each continuing entity;”.

4. Section 3.1 of the Regulation is amended:

(1) by replacing, in the French text of paragraph 5, the words “des contrats à terme ou des contrats à livrer” with the words “des contrats à terme standardisés ou des contrats à terme de gré à gré”;

(2) by replacing, in paragraph 15, the words “net asset value” with the words “net assets”.

5. Section 3.2 of the Regulation is amended:

(1) by replacing the French text of paragraphs 1, 2, 3 and 4 with the following:

“1. le produit de dividende;

“2. le produit d'intérêts;

“3. les revenus provenant des dérivés;

“4. les produits provenant des prêts de titres;”;

(2) by adding the following after paragraph 10:

“10.1. commissions and other portfolio transaction costs.”;

(3) by replacing, in the French text of paragraph 13, the words “la société de gestion” with the words “le gestionnaire”.

6. Section 3.5 of the Regulation is amended, in the French text of paragraph (6):

(1) by inserting, in subparagraph (ii) of subparagraph (a) and after the words “contrat à terme”, the word “standardisé”;

(2) by replacing, in subparagraph (b), the words “contrats à terme et contrats à livrer” with the words “contrats à terme standardisés et contrats à terme de gré à gré”.

7. Section 3.6 of the Regulation is amended, in paragraph (1):

(1) by replacing subparagraph 3 with the following:

“3. to the extent the amount is ascertainable, the soft dollar portion of the total commissions and other portfolio transaction costs paid or payable to dealers by the investment fund, where the soft dollar portion is the amount paid or payable for goods and services other than order execution.”;

(2) by adding the following after subparagraph 4:

“5. the net asset value per security as at the date of the financial statements compared to the net assets per security as shown on the statement of net assets, and an explanation of each of the differences between these amounts.”.

8. Section 3.11 of the Regulation is amended by replacing, in paragraph (2), the words “net asset value per security” with the words “net assets per security”.

9. Section 8.2 of the Regulation is amended by replacing, in paragraph (c), the words “net asset value” with the words “net assets”.

10. Section 8.4 of the Regulation is amended by replacing the words “net asset value” with the words “net assets”.

11. Section 9.2 of the Regulation is replaced by the following:

“9.2. Requirement to File Annual Information Form

An investment fund must file an annual information form if the investment fund has not obtained a receipt for a prospectus during the last 12 months preceding its financial year end.”.

12. Section 10.3 of the Regulation is amended by adding the words “or the equivalent of a reporting issuer in a foreign jurisdiction” after “reporting issuer”.

13. Section 14.2 of the Regulation is amended:

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

“(1) The net asset value of an investment fund must be calculated using the fair value of the investment fund’s assets and liabilities.

“(1.1) The net asset value of an investment fund must include the income and expenses of the investment fund accrued up to the date of calculation of the net asset value.

“(1.2) For the purposes of paragraph (1), fair value means

(a) the market value based on reported prices and quotations in an active market, or

(b) if the market value is not available, or the manager of the investment fund believes that it is unreliable, a value that is fair and reasonable in all the relevant circumstances.

“(1.3) The manager of an investment fund must

(a) establish and maintain appropriate written policies and procedures for determining the fair value of the investment fund’s assets and liabilities; and

(b) consistently follow those policies and procedures.

“(1.4) The manager of an investment fund must maintain a record of the determination of fair value and the reasons supporting that determination.”;

(2) by replacing, in paragraph (2), the words “Despite subsection (1), for” with the word “For”;

(3) by replacing, in paragraph (5), the words “subsection (3)” with the words “paragraph (3)(a)”.

14. Section 15.1 of the Regulation is amended:

(1) by replacing clause (A) of subparagraph (i) of subparagraph (a) of paragraph (1) with the following clause:

“(A) total expenses of the investment fund, excluding commissions and other portfolio transaction costs, before income taxes, for the financial year or interim period, as shown on its statement of operations; and”;

(2) by replacing, in the French text of paragraph (3), the words “sa société de gestion” with the words “son gestionnaire”.

15. Section 15.2 of the Regulation is amended, in paragraph (1):

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

“(i) multiplying the total expenses of each underlying investment fund, excluding commissions and other portfolio transaction costs, before income taxes, for the financial year or interim period, by”;

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

“(b) the total expenses of the investment fund, excluding commissions and other portfolio transaction costs, before income taxes, for the period.”.

16. Sections 18.2 to 18.5 of the Regulation are repealed.**17.** Form 81-106F1 of the Regulation is amended:

(1) by adding the following after paragraph (c) of Item 1 of Part A:

“(f) Terminology

All references to “net assets” or “net assets per security” in this Form are references to net assets determined in accordance with Canadian GAAP as presented in the financial statements of the investment fund. All references to “net asset value” or “net asset value per security” in this Form are references to net asset value determined in accordance with Part 14 of the Regulation.

Investment funds must use net assets as shown on the financial statements in the “The Fund’s Net Assets per [Unit/Share]” table. All other calculations for the purposes of the MRFP must be made using net asset value.”;

(2) in Part B:

(a) in Item 3.1:

(i) by deleting, in paragraph (1), the sentence “This information is derived from the Fund’s audited annual financial statements.” and by replacing the tables with the following:

“The Fund’s Net Assets per [Unit/Share]”⁽¹⁾

	[insert year]	[insert year]	[insert year]	[insert year]	[insert year]
Net Assets, beginning of year	\$	\$	\$	\$	\$
Increase (decrease) from operations:					
total revenue	\$	\$	\$	\$	\$
total expenses	\$	\$	\$	\$	\$
realized gains (losses) for the period	\$	\$	\$	\$	\$
unrealized gains (losses) for the period	\$	\$	\$	\$	\$
Total increase (decrease) from operations⁽²⁾	\$	\$	\$	\$	\$
Distributions:					
From income (excluding dividends)	\$	\$	\$	\$	\$
From dividends	\$	\$	\$	\$	\$
From capital gains	\$	\$	\$	\$	\$
Return of capital	\$	\$	\$	\$	\$
Total Annual Distributions⁽³⁾	\$	\$	\$	\$	\$
Net assets at [insert last day of financial year] of year shown	\$	\$	\$	\$	\$

(1) *This information is derived from the Fund’s audited annual financial statements. The net assets per security presented in the financial statements differs from the net asset value calculated for fund pricing purposes. [An explanation of these differences can be found in the notes to the financial statements./This difference is due to [explain].]*

(2) *Net assets and distributions are based on the actual number of [units/shares] outstanding at the relevant time. The increase/decrease from operations is based on the weighted average number of [units/shares] outstanding over the financial period.*

(3) *Distributions were [paid in cash/reinvested in additional [units/shares] of the Fund, or both].*

Ratios and Supplemental Data

	[insert year]	[insert year]	[insert year]	[insert year]	[insert year]
Total net asset value (000's) ⁽¹⁾	\$	\$	\$	\$	\$
Number of [units/shares] outstanding ⁽¹⁾					
Management expense ratio ⁽²⁾	%	%	%	%	%
Management expense ratio before waivers or absorptions	%	%	%	%	%
Trading expense ratio ⁽³⁾	%	%	%	%	%
Portfolio turnover rate ⁽⁴⁾	%	%	%	%	%
Net asset value per [unit/share]	\$	\$	\$	\$	\$
Closing market price [if applicable]	\$	\$	\$	\$	\$

(1) *This information is provided as at [insert date of end of financial year] of the year shown.*

(2) *Management expense ratio is based on total expenses (excluding commissions and other portfolio transaction costs) for the stated period and is expressed as an annualized percentage of daily average net asset value during the period.*

(3) *The trading expense ratio represents total commissions and other portfolio transaction costs expressed as an annualized percentage of daily average net asset value during the period.*

(4) *The Fund's portfolio turnover rate indicates how actively the Fund's portfolio adviser manages its portfolio investments. A portfolio turnover rate of 100% is equivalent to the Fund buying and selling all of the securities in its portfolio once in the course of the year. The higher a fund's portfolio turnover rate in a year, the greater the trading costs payable by the fund in the year, and the greater the chance of an investor receiving taxable capital gains in the year. There is not necessarily a relationship between a high turnover rate and the performance of a fund.”;*

(ii) by deleting paragraph (2);

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

“(6) Except for net assets, net asset value and distributions, calculate per unit/share values on the basis of the weighted average number of unit/shares outstanding over the financial period.”;

(iv) by replacing paragraph (12) with the following:

“(12) (a) Calculate the trading expense ratio by dividing

(i) the total commissions and other portfolio transaction costs disclosed in the statement of operations, by

(ii) the same denominator used to calculate the management expense ratio.

(b) If an investment fund invests in securities of other investment funds, calculate the trading expense ratio using the methodology required for the calculation of the management expense ratio in section 15.2 of the Regulation, making reasonable assumptions or estimates when necessary.”;

(v) by replacing paragraph (13) with the following:

“(13) Provide the closing market price only if the investment fund is traded on an exchange.”;

(b) in Item 3.2, by replacing the first paragraph with the following:

“An investment fund that is a scholarship plan must comply with Item 3.1, except that the following table must replace “The Fund's Net Assets per [Unit/Share]” table and the “Ratios and Supplemental Data” table.”;

(c) by replacing the Instruction in section 3.3 with the following:

“INSTRUCTION:

“The disclosure must list the major services paid for out of the management fees, including portfolio adviser compensation, waived or absorbed expenses, trailing commissions and sales commissions, if applicable. Services may be grouped together so that commercially sensitive information, such as the specific compensation paid to a portfolio adviser or the manager’s profit, is not determinable.”;

(d) by replacing paragraph (3) of Item 4.1 with the following:

“(3) Set out in the footnotes to the chart or table required by this Item the assumptions relevant to the calculation of the performance information, including any assumptions or estimates made in order to calculate the return on the short portfolio, if applicable. Include a statement of the significance of the assumption that distributions are reinvested for taxable investments.”;

(e) by replacing, in the French text of paragraph (3) of Item 4.2, the words “position vendeur sur un portefeuille” with the words “position vendeur dans un portefeuille”;

(f) in Item 4.3:

(i) in paragraph (1):

(A) by adding, in the French text of the introductory sentence and after the words “sous le sous-titre «Rendements composés annuels»”, the words “, l’information suivante”;

(B) by replacing, at the end of the English text of subparagraph *a*, the word “or” with the word “and”;

(ii) by replacing, in the French text of paragraph (6), the words “position vendeur sur un portefeuille” with the words “position vendeur dans un portefeuille”;

(g) in Item 5:

(i) in paragraph (2):

(A) by replacing, in subparagraph (b), the words “net assets” with the words “net asset value”;

(B) by replacing, in subparagraph (d), the words “net assets” with the words “net asset value”;

(ii) by replacing Instruction (8) with the following:

“(8) If an investment fund invests substantially all of its assets directly or indirectly (through the use of derivatives) in securities of one other fund, list only the 25 largest holdings of the other investment fund by percentage of net asset value of the other investment fund, as disclosed by the other investment fund as at the most recent quarter end.”;

(iii) by adding the following after Instruction (9):

“(10) A labour sponsored or venture capital fund must disclose its top 25 positions, but is not required to express any of its venture investments as a percentage of the fund’s net asset value if it complies with the conditions in Part 8 of the Instrument to be exempt from disclosing the individual current values of venture investments in its statement of investment portfolio.”.

18. The Regulation is amended by replacing, wherever they appear in the French text, the words “la société de gestion”, “de la société de gestion”, “sa société de gestion” and “la même société de gestion” with “le gestionnaire”, “du gestionnaire”, “son gestionnaire” and “le même gestionnaire”, respectively.

19. This Regulation shall come into force on September 8, 2008.

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