

## **REGULATION TO AMEND REGULATION 81-107 RESPECTING INDEPENDENT REVIEW COMMITTEE FOR INVESTMENT FUNDS**

Securities Act

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

**1.** Section 1.1 of Regulation 81-107 respecting Independent Review Committee for Investment Funds (chapter V-1.1, r. 43) is amended by adding, after paragraph (2), the following:

“(3) Despite subsection (1), sections 6.1 to 6.5 also apply to an investment fund that is not a reporting issuer.

“(4) Despite subsection (1), sections 6.1 and 6.5 also apply in respect of a managed account.”.

**2.** Section 1.6 of the Regulation is amended by replacing, in the French text, the words “l’activité, les opérations” with the words “l’entreprise, les activités”.

**3.** Section 5.2 of the Regulation is amended by replacing, in paragraph (1), subparagraph (b) with the following:

“(b) a transaction in securities of an issuer described in any of the following:

- (i) subsection 6.2(1);
- (ii) subsection 6.3(1);
- (iii) subsection 6.4(1);
- (iv) subsection 6.5(1);”.

**4.** Section 6.1 of the Regulation is amended:

(1) in paragraph (1):

(a) in subparagraph (i) of subparagraph (a):

- (i) by replacing, in clause (C), “is quoted; or” with “is quoted, or”;
- (ii) by inserting, after clause (C), the following:

“(D) the “last sale price” as defined under the Universal Market Integrity Rules of the Investment Industry Regulatory Organization of Canada, as amended from time to time; or,”;

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

“(a.1) “managed account” means an account, or an investment portfolio, that is managed by a portfolio manager or portfolio adviser on behalf of a client under an investment management agreement but does not include

(i) an account of a “responsible person”, as defined under Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations (chapter V-1.1, r. 10), or

(ii) an account of an investment fund, and”;

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

“(2) A portfolio manager of a managed account or a portfolio manager of an investment fund, including, for greater certainty, an investment fund that is not a reporting issuer, may purchase a security of an issuer from, or sell a security of an issuer to, another investment

fund, including, for greater certainty, an investment fund that is not a reporting issuer, managed by the same manager or an affiliate of the manager, if, at the time of the transaction,

(a) the portfolio manager, on behalf of the investment fund or managed account, is purchasing from or selling to another investment fund that is a reporting issuer or, if the investment fund is not a reporting issuer, the manager has appointed an independent review committee that complies with sections 3.7 and 3.9 for the purpose of approving the transaction,

(b) the independent review committee has approved the transaction under subsection 5.2(2),

(c) the investment management agreement for the managed account authorizes the purchase or sale of the security,

(d) the bid and ask price of the security is readily available,

(e) the investment fund receives no consideration and the only cost for the transaction is the nominal cost incurred by the investment fund to print or otherwise display the trade,

(f) the transaction is executed at the current market price of the security, and

(g) the transaction is subject to market integrity requirements.”;

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

“(2.1) An investment fund, or a portfolio manager on behalf of a managed account, referred to in subsection (2), must keep records in accordance with the record-keeping requirements applicable to registered firms set out in sections 11.5 and 11.6 of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations (chapter V-1.1, r. 10).”;

(4) by replacing paragraphs (3) to (5) with the following:

“(3) With respect to a purchase or sale of a security referred to in subsection (2), Regulation 21-101 respecting Marketplace Operation (chapter V-1.1, r. 5), and Parts 6 and 8 of Regulation 23-101 respecting Trading Rules (chapter V-1.1, r. 6), do not apply to any of the following:

(a) a portfolio manager or portfolio adviser of an investment fund, including for greater certainty, an investment fund that is not a reporting issuer;

(b) a portfolio manager or portfolio adviser of a managed account;

(c) an investment fund, including for greater certainty, an investment fund that is not a reporting issuer;

(d) a managed account.

“(4) With respect to a purchase or sale of a security referred to in subsection (2), the inter-fund self-dealing investment prohibitions do not apply to any of the following:

(a) a portfolio manager or portfolio adviser of an investment fund, including for greater certainty, an investment fund that is not a reporting issuer;

(b) a portfolio manager or portfolio adviser of a managed account;

(c) an investment fund, including for greater certainty, an investment fund that is not a reporting issuer;

(d) a managed account.

“(5) With respect to a purchase or sale of a security referred to in subsection (2), the dealer registration requirement does not apply to a portfolio manager or portfolio adviser of an investment fund, including, for greater certainty, an investment fund that is not a reporting issuer.”.

5. Section 6.2 of the Regulation is replaced with the following:

**“6.2. Transactions in securities of related issuers**

(1) An investment fund, including for greater certainty, an investment fund that is not a reporting issuer, may make or hold an investment in the security of an issuer related to it, to its manager or to an entity related to its manager, if,

(a) at the time the investment is made,

(i) in the case of an investment made by an investment fund that is not a reporting issuer,

(A) the manager of the investment fund has appointed an independent review committee that complies with sections 3.7 and 3.9 for the purpose of approving the investment, and

(B) the independent review committee has approved the investment in compliance with subsection 5.2(2), and

(ii) in the case of an investment made by an investment fund that is a reporting issuer, the investment fund’s independent review committee has approved the investment in compliance with subsection 5.2(2), and

(b) the purchase is made on an exchange on which the securities of the issuer are listed and traded.

(2) After an investment referred to in subsection (1) is made, and no later than the time the investment fund files its annual financial statements, the manager of the investment fund must file the particulars of the investment with the regulator, except in Québec, or the securities regulatory authority.

(3) The investment fund conflict of interest investment restrictions do not apply to an investment fund, including, for greater certainty, an investment fund that is not a reporting issuer, with respect to an investment fund referred to in subsection (1) if the investment is made in accordance with that subsection.

(4) For the purpose of subsection (3), “investment fund conflict of interest investment restrictions” has the meaning ascribed to that term in Regulation 81-102 respecting Investment Funds (chapter V-1.1, r. 39).”.

6. The Regulation is amended by inserting, after section 6.2, the following:

**“6.3. Transactions in securities of related issuers – Secondary market non-exchange traded debt securities**

(1) An investment fund, including, for greater certainty, an investment fund that is not a reporting issuer, may make an investment in the secondary market in a non-exchange traded debt security of an issuer related to it, to its manager or to an entity related to the manager, and continue to hold the debt security, if the conditions set out in subsection (2) are satisfied.

(2) For the purposes of subsection (1), an investment fund may make an investment in a debt security referred to in subsection (1) if,

(a) at the time the investment is made,

(i) in the case of an investment made by an investment fund that is not a reporting issuer,

(A) the manager of the investment fund has appointed an independent review committee that complies with sections 3.7 and 3.9 for the purpose of approving the investment, and

(B) the independent review committee has approved the investment in compliance with subsection 5.2(2), and

(ii) in the case of an investment made by an investment fund that is a reporting issuer, the investment fund's independent review committee has approved the investment in compliance with subsection 5.2(2),

(b) at the time the investment is made, the debt security has a designated rating as defined in paragraph (b) of the definition of "designated rating" in Regulation 44-101 respecting Short Form Prospectus Distributions (chapter V-1.1, r. 16),

(c) in the case of an investment made on a marketplace, the price paid for the debt security is not more than the price for the debt security determined in accordance with the requirements of that marketplace,

(d) in the case of an investment that is not made on a marketplace, the price paid for the debt security is not more than

(i) the price at which an arm's length seller is willing to sell the debt security,

(ii) the price quoted publicly, immediately before the investment is made, by an independent marketplace, or

(iii) the price quoted, immediately before the investment is made, by an arm's length purchaser or seller of the debt security, and

(e) the investment is subject to the applicable "market integrity requirements" as defined in section 6.1, if any.

(3) After an investment referred to in subsection (2) is made, and no later than the time the investment fund files its annual financial statements, the manager of the investment fund must file the particulars of the investment with the regulator, except in Québec, or the securities regulatory authority.

(4) The investment fund conflict of interest investment restrictions do not apply to an investment fund, including, for greater certainty, an investment fund that is not a reporting issuer, with respect to an investment referred to in subsection (2) if the investment is made in accordance with that subsection.

(5) For the purpose of subsection (4), "investment fund conflict of interest investment restrictions" has the meaning ascribed to that term in Regulation 81-102 respecting Investment Funds (chapter V-1.1, r. 39).

#### **"6.4. Transactions in securities of related issuers – Primary market distributions of long-term debt securities**

(1) An investment fund, including, for greater certainty, an investment fund that is not a reporting issuer, may make an investment in a long-term debt security of an issuer related to it, to its manager or to an entity related to the manager, if the investment is made under a distribution of the long-term debt security of that issuer, and continue to hold the debt security, if,

(a) at the time the investment is made,

(i) in the case of an investment made by an investment fund that is not a reporting issuer,

(A) the manager of the investment fund has appointed an independent review committee that complies with sections 3.7 and 3.9 for the purpose of approving the investment, and

(B) the independent review committee has approved the investment in compliance with subsection 5.2(2), and

(ii) in the case of an investment made by an investment fund that is a reporting issuer, the investment fund's independent review committee has approved the investment in compliance with subsection 5.2(2),

(iii) the debt security has a term to maturity greater than 365 days,

(iv) the debt security is not asset-backed commercial paper,

(v) the debt security has a designated rating as defined in paragraph (b) of the definition of "designated rating" in Regulation 44-101 respecting Short Form Prospectus Distributions (chapter V-1.1, r. 16);

(vi) the distribution is for at least \$100 million, and

(vii) at least 2 purchasers that are arm's length purchasers, including, for greater certainty, "independent underwriters" within the meaning of Regulation 33-105 respecting Underwriting Conflicts (chapter V-1.1, r. 11), have collectively purchased at least 20% of the distribution,

(b) the price paid for the long-term debt security is not higher than the lowest price paid by any arm's length purchaser that participates in the distribution, and

(c) immediately after the investment is made,

(i) the investment fund holds no more than 5% of its net assets in long-term debt securities of the issuer, and

(ii) the investment fund, together with other investment funds managed by the manager, hold no more than 20% of the long-term debt securities issued in the distribution.

(2) After an investment referred to in subsection (1) is made, and no later than the time the investment fund files its annual financial statements, the manager of the investment fund must file the particulars of the investment with the regulator, except in Québec, or the securities regulatory authority.

(3) The investment fund conflict of interest investment restrictions do not apply to an investment fund, including, for greater certainty, an investment fund that is not a reporting issuer, with respect to an investment referred to in subsection (2) if the investment is made in accordance with that subsection.

(4) For the purpose of subsection (3), "investment fund conflict of interest investment restrictions" has the meaning ascribed to that term in Regulation 81-102 respecting Investment Funds (chapter V-1.1, r. 39).

#### **"6.5. Transactions in debt securities with a related dealer – principal trades in debt securities**

(1) A portfolio manager or portfolio adviser, acting on behalf of an investment fund, including, for greater certainty, an investment fund that is not a reporting issuer, or acting on behalf of a managed account as defined in section 6.1, may cause the investment fund or managed account to purchase a debt security of any issuer from, or sell a debt security of any issuer to, a dealer related to the portfolio manager, acting for its own account, if at the time of the transaction,

(a) in the case of an investment fund that is not a reporting issuer,

(i) the manager of the investment fund has appointed an independent review committee that complies with sections 3.7 and 3.9 for the purpose of approving the transaction, and

(ii) the independent review committee has approved the transaction in compliance with subsection 5.2(2),

(b) in the case of an investment fund that is a reporting issuer, the investment fund’s independent review committee has approved the transaction in compliance with subsection 5.2(2);

(c) the investment management agreement for the managed account authorizes the purchase or sale of the debt security,

(d) the bid and ask price of the security transacted is readily available,

(e) the purchase is not executed at a price that is higher than the available ask price or the sale is not executed at a price that is lower than the available bid price, and

(f) the purchase or sale is subject to the applicable market integrity requirements as defined in section 6.1.

(2) An investment fund, or a portfolio manager on behalf of a managed account referred to in subsection (1), must keep records in accordance with the record-keeping requirements applicable to registered firms set out in sections 11.5 and 11.6 of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations (chapter V-1.1, r. 10).

(3) With respect to a purchase or sale of a security referred to in subsection (1), the inter-fund self-dealing investment prohibitions do not apply to any of the following:

(a) a portfolio manager or portfolio adviser of an investment fund, including for greater certainty, an investment fund that is not a reporting issuer;

(b) a portfolio manager or portfolio adviser of a managed account;

(c) an investment fund, including for greater certainty, an investment fund that is not a reporting issuer;

(d) a managed account.”.

7. Appendix B of the Regulation is replaced with the following:

**“APPENDIX B INTER-FUND SELF-DEALING CONFLICT OF INTEREST PROVISIONS**

JURISDICTION	LEGISLATION REFERENCE
Alberta	Paragraph 13.5(2)(b) of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations  Section 4.2 of Regulation 81-102 respecting Investment Funds
British Columbia	Paragraph 13.5(2)(b) of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations  Section 4.2 of Regulation 81-102 respecting Investment Funds
Manitoba	Paragraph 13.5(2)(b) of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations  Section 4.2 of Regulation 81-102 respecting Investment Funds

New Brunswick	<p>Paragraph 144(1)(b) of the Securities Act (SNB 2004, c S-5.5)</p> <p>Subsection 11.7(6) of Local Rule 31-501 Registration Requirements</p> <p>Paragraph 13.5(2)(b) of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations</p> <p>Section 4.2 of Regulation 81-102 respecting Investment Funds</p>
Newfoundland and Labrador	<p>Paragraph 119(2)(b) of the Securities Act (R.S.N.L. 1990, c. S-13)</p> <p>Subsection 103(6) of Reg. 805/96 (C.N.L.R. 805/96)</p> <p>Paragraph 13.5(2)(b) of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations</p> <p>Section 4.2 of Regulation 81-102 respecting Investment Funds</p>
Northwest Territories	<p>Paragraph 13.5(2)(b) of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations</p> <p>Section 4.2 of Regulation 81-102 respecting Investment Funds</p>
Nova Scotia	<p>Paragraph 126(2)(b) of the Securities Act (R.S.N.S. 1989, c. 418)</p> <p>Subsection 32(6) of the General Securities Rules of Nova Scotia Securities Commission (N.S. Reg. 51/96)</p> <p>Paragraph 13.5(2)(b) of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations</p> <p>Section 4.2 of Regulation 81-102 respecting Investment Funds</p>
Nunavut	<p>Paragraph 13.5(2)(b) of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations</p> <p>Section 4.2 of Regulation 81-102 respecting Investment Funds</p>
Ontario	<p>Paragraph 13.5(2)(b) of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations</p> <p>Section 4.2 of Regulation 81-102 respecting Investment Funds</p>

Prince Edward Island	Paragraph 13.5(2)(b) of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations  Section 4.2 of Regulation 81-102 respecting Investment Funds
Quebec	Paragraph 13.5(2)(b) of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations  Section 4.2 of Regulation 81-102 respecting Investment Funds
Saskatchewan	Paragraph 13.5(2)(b) of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations  Section 4.2 of Regulation 81-102 respecting Investment Funds
Yukon	Paragraph 13.5(2)(b) of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations  Section 4.2 of Regulation 81-102 respecting Investment Funds

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**8. Effective Date**

- (1) This Regulation comes into force on 5 January 2022.
- (2) In Saskatchewan, despite subsection (1), if this Regulation is filed with the Registrar of Regulations after 5 January 2022, this Regulation comes into force on the day on which it is filed with the Registrar of Regulations.