

**THE MANITOBA SECURITIES COMMISSION**  
**MSC RULE 2006-5**  
(Section 149.1, *The Securities Act*)

**NATIONAL INSTRUMENT 81-102**  
**MUTUAL FUNDS**  
**AMENDMENT INSTRUMENT**

1. *The Table of Contents of National Instrument 81-102 Mutual Funds is amended by adding the following after Appendix B-1, Appendix B-2 and Appendix B-3 – Compliance Reports:*

"APPENDIX C –Provisions contained in Securities Legislation for the Purpose of Subsection 4.1(5) – Prohibited Investments".

2. *Section 1.1 of National Instrument 81-102 Mutual Funds is amended by:*

(a) *adding the following after the definition of "illiquid asset":*

""**independent review committee**" means the independent review committee of the investment fund established under National Instrument 81-107 *Independent Review Committee for Investment Funds*";

(b) *repealing the definition of "mutual fund conflict of interest investment restrictions" and substituting the following:*

""**mutual fund conflict of interest investment restrictions**" means the provisions of securities legislation that

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

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

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

(d) prohibit a mutual fund, a responsible person as defined in securities legislation, a portfolio adviser or a registered person acting under a management contract from knowingly causing any investment portfolio managed by it, or a mutual fund, to invest in, or prohibit a mutual fund from investing in, any issuer in which a responsible person,

as defined in securities legislation, is an officer or director unless the specific fact is disclosed to the mutual fund, securityholder or client, and where securities legislation requires it, the written consent of the client to the investment is obtained before the purchase;

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

(f) prohibit a portfolio adviser or a registered person acting under a management contract from subscribing to or buying securities on behalf of a mutual fund, where his or her own interest might distort his or her judgment, unless the specific fact is disclosed to the client and the written consent of the client to the investment is obtained before the subscription or purchase."; and

(c) *adding the following after the definition of "mutual fund conflict of interest reporting requirements":*

*""NI 81-107" means National Instrument 81-107 Independent Review Committee for Investment Funds."*

*3. Section 4.1 of National Instrument 81-102 Mutual Funds is amended by adding the following after subsection (3):*

**"4.1(4)** Subsection (1) does not apply to an investment in a class of securities of an issuer if, at the time of each investment

(a) the independent review committee of the dealer managed mutual fund has approved the transaction under subsection 5.2(2) of NI 81-107;

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

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

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

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

(d) no later than the time the dealer managed mutual fund files its annual financial statements, the manager of the dealer managed mutual fund files the particulars of each

investment made by the dealer managed mutual fund during its most recently completed financial year.

**4.1(5)** The corresponding provisions contained in securities legislation referred to in Appendix C do not apply with respect to an investment in a class of securities of an issuer referred to in subsection (4) if the investment is made in accordance with that subsection."

4. *Section 4.3 of National Instrument 81-102 Mutual Funds is amended by*

(a) *renumbering 4.3 Exception as subsection 4.3(1); and*

(b) *adding the following after subsection 4.3(1):*

**"4.3(2)** Section 4.2 does not apply to a purchase or sale of a class of debt securities by a mutual fund from, or to, another mutual fund managed by the same manager or an affiliate of the manager, if, at the time of the transaction

(a) the mutual fund is purchasing from, or selling to, another mutual fund to which NI 81-107 applies;

(b) the independent review committee of the mutual fund has approved the transaction under subsection 5.2(2) of NI 81-107; and

(c) the transaction complies with subsection 6.1(2) of NI 81-107."

5. *Section 5.1 of National Instrument 81-102 Mutual Funds is amended by repealing paragraph 5.1(d).*

6. *Section 5.3 of National Instrument 81-102 Mutual Funds is amended*

(a) *by adding the following after subsection 5.3(1):*

**"5.3(2)** Despite section 5.1, the approval of securityholders of a mutual fund is not required to be obtained for a change referred to in paragraph 5.1(f) if

(a) the independent review committee of the mutual fund has approved the change under subsection 5.2(2) of NI 81-107;

(b) the mutual fund is being reorganized with, or its assets are being transferred to, another mutual fund to which this Instrument and NI 81-107 apply and that is managed by the manager, or an affiliate of the manager, of the mutual fund;

(c) the reorganization or transfer of assets of the mutual fund complies with the criteria in paragraphs 5.6(1)(a), (b), (c), (d), (g), (h) and (i) and subsection 5.6(2);

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

(e) the notice referred to in paragraph (d) to securityholders is sent 60 days before the effective date of the change."; and

(b) by adding the following after section 5.3:

**"Change of auditor of the mutual fund**

**5.3.1** The auditor of the mutual fund may not be changed unless

(a) the independent review committee of the mutual fund has approved the change of auditor under subsection 5.2(2) of NI 81-107;

(b) the simplified prospectus of the mutual fund discloses that, although the approval of securityholders will not be obtained before making the change, securityholders will be sent a written notice at least 60 days before the effective date of the change, and

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

7. *National Instrument 81-102 Mutual Funds is amended by adding the following after Appendix B-3 – AUDIT REPORT:*

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

<b>JURISDICTION</b>	<b>SECURITIES LEGISLATION REFERENCE</b>
Alberta	s. 9 of ASC Policy 7.1
British Columbia	s. 81 of the <i>Securities Rules</i> (British Columbia)
Newfoundland and Labrador	s. 191 of Reg 805/96
New Brunswick	s. 13.2 of Local Rule 31-501 Registration Requirements
Nova Scotia	s. 67 of the General Securities Rules
Ontario	s. 227 of Reg. 1015
Quebec	Article 236 and 237.1 of the <i>Securities Regulation</i>

8. *This Instrument comes into force on November 1, 2006.*

9. *This Instrument may be cited as MSC Rule 2006-5.*