

THE MANITOBA SECURITIES COMMISSION
MSC RULE 2002-3
(Section 149.1, *The Securities Act*)

MULTILATERAL INSTRUMENT 81-104
COMMODITY POOLS

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PART 1 – DEFINITIONS, APPLICATION AND INTERPRETATION

Definitions

1.1(1) In this Instrument

"**Canadian Securities Course**" means a course prepared and conducted by the Canadian Securities Institute and so named by that Institute as of the date on which this Instrument comes into force, every predecessor to that course, and every successor to that course that does not narrow the scope of the significant subject matter of the course;

"Chartered Financial Analyst Program" means the three level program prepared and conducted by the Association for Investment Management and Research, and so named by that Association as of the date on which this Instrument comes into force, every predecessor to that program, and every successor to that program that does not narrow the scope of the significant subject matter of the program;

"**commodity pool**" means a mutual fund, other than a precious metals fund, that has adopted fundamental investment objectives that permit it to use or invest in

(a) specified derivatives in a manner that is not permitted by National Instrument 81-102 Mutual Funds, or

(b) physical commodities in a manner that is not permitted by National Instrument 81-102;

"**Derivatives Fundamentals Course**" means a course prepared and conducted by the Canadian Securities Institute and so named by that Institute as of the date that this Instrument comes into force, every predecessor to that course, and every successor to that course that does not narrow the scope of the significant subject matter of the course;

"**mutual fund restricted individual**" means an individual registered as a salesperson, partner, director or officer of a dealer, if the activities of that individual are restricted to trading in securities of mutual funds; and

"**precious metals fund**" means a mutual fund that has adopted fundamental investment objectives, and received all required regulatory approvals, that permit it to invest in precious

metals or in entities that invest in precious metals and that otherwise complies with National Instrument 81-102.

1.1(2) Terms defined in National Instrument 81-102 and used in this Instrument have the respective meanings ascribed to them in National Instrument 81-102.

Application

1.2 This Instrument applies only to

(a) a commodity pool that

(i) offers, or has offered, securities under a prospectus for so long as the commodity pool remains a reporting issuer, or

(ii) is filing a preliminary prospectus or its first prospectus; and

(b) a person or company in respect of activities pertaining to a commodity pool referred to in paragraph (a) or pertaining to the filing of a prospectus to which subsection 3.2(1) applies.

Interpretation

1.3(1) Each section, part, class or series of a class of securities of a commodity pool that is referable to a separate portfolio of assets is considered to be a separate commodity pool for purposes of this Instrument.

1.3(2) For the purposes of a commodity pool complying with section 2.3 of National Instrument 81-102, the definition of the term "public quotation" used in the definition of the term "illiquid asset" in section 1.1 of National Instrument 81-102, includes any quotation of a price for foreign currency forwards and foreign currency options in the interbank market.

PART 2 – INVESTMENT RESTRICTIONS AND PRACTICES

Investment restrictions and practices

2.1(1) Section 2.1 of National Instrument 81-102 does not apply to restrict the exposure of a commodity pool to a counterparty of the commodity pool in specified derivatives transactions.

2.1(2) The following provisions of National Instrument 81-102 do not apply to a commodity pool:

1. Paragraphs 2.3(d), (e), (f), (g) and (h).
2. Paragraph 2.7(1)(a).
3. Subsections 2.7(3), (4) and (5).
4. Sections 2.8 and 2.11.

PART 3 – NEW COMMODITY POOLS

Non-application

3.1 Sections 3.1 and 3.2 of National Instrument 81-102 do not apply to a commodity pool.

New commodity pools

3.2(1) No person or company shall file a prospectus for a newly established commodity pool unless

(a) an investment of at least \$50,000 in securities of the commodity pool has been made, and those securities are beneficially owned, before the time of filing by

(i) the manager, a portfolio adviser, a promoter or a sponsor of the commodity pool,

(ii) the directors, officers or shareholders of any of the manager, a portfolio adviser, a promoter or a sponsor of the commodity pool, or

(iii) any combination of the persons or companies referred to in subparagraphs (i) and (ii); and

(b) the prospectus of the commodity pool states that the commodity pool will not issue securities other than those referred to in paragraph (a) unless subscriptions aggregating not less than \$500,000 have been received by the commodity pool from investors other than the persons and companies referred to in subparagraphs (i) and (ii) of paragraph (a) and accepted by the commodity pool.

3.2(2) A commodity pool may redeem, repurchase or return any amount invested in, securities issued upon the investment in the commodity pool referred to in paragraph (1)(a) only if

(a) securities issued under paragraph (1)(a) that had an aggregate issue price of \$50,000 remain outstanding and at least \$50,000 invested under paragraph (1)(a) remains invested in the commodity pool; or

(b) the redemption, repurchase or return is effected as part of the dissolution or termination of the commodity pool.

Prohibition against distribution

3.3 If a prospectus of a commodity pool contains the disclosure described in paragraph 3.2(1)(b), the commodity pool shall not distribute any securities unless the subscriptions described in that disclosure, together with payment for the securities subscribed for, have been received.

British Columbia commodity pools

3.4 In British Columbia, sections 3.1, 3.2 and 3.3 do not apply to a commodity pool.

PART 4 – PROFICIENCY AND SUPERVISORY REQUIREMENTS

Proficiency and supervisory requirements

4.1(1) No mutual fund restricted individual shall trade in a security of a commodity pool unless that individual

(a) has received at least a passing grade for the Canadian Securities Course;

(b) has received at least a passing grade for the Derivatives Fundamentals Course;

(c) has successfully completed the Chartered Financial Analyst Program; or

(d) meets the proficiency standards applicable to trading in securities of commodity pools required by a self-regulatory organization of which the individual, or his or her organization, is a member if the securities regulatory authority or regulator has completed any required review, approval or non-disapproval of the regulatory instrument of the self-regulatory organization that establishes those proficiency standards.

4.1(2) No principal distributor or participating dealer shall trade in a security of a commodity pool in the local jurisdiction unless the individual designated by the principal distributor or participating dealer to be responsible for the supervision of trades of securities of commodity pools in the local jurisdiction has received at least a passing grade for the Derivatives Fundamentals Course or has successfully completed the Chartered Financial Analyst Program.

4.1(3) Despite subsection (2), but subject to compliance with securities legislation, a principal distributor may agree to act as principal distributor of a commodity pool and may trade in securities of a commodity pool if all trades are effected through a participating dealer that satisfies the requirements of subsection (2).

Trades of commodity pools in British Columbia

4.2 Section 4.1 does not apply in British Columbia.

PART 5 – INCENTIVE FEES

Non-application

5.1 Part 7 of National Instrument 81-102 does not apply to a commodity pool.

Incentive fees

5.2 A commodity pool shall not pay, or enter into arrangements that would require it to pay, and no securities of a commodity pool shall be sold on the basis that an investor would be required to pay, a fee that is determined by the performance of the commodity pool, unless

- (a) the payment of the fee is based on the cumulative total return of the commodity pool for the period that began immediately after the last period for which the performance fee was paid; and
- (b) the method of calculation of the fee is described in the prospectus of the commodity pool.

Multiple portfolio advisors

5.3 Section 5.2 applies to fees payable to a portfolio adviser of a commodity pool that has more than one portfolio adviser, if the fees are calculated on the basis of the performance of the portfolio assets under management by that portfolio adviser, as if those portfolio assets were a separate commodity pool.

PART 6 – REDEMPTION OF SECURITIES OF A COMMODITY POOL

Frequency of redemptions

6.1 If disclosed in its prospectus, a commodity pool may include, as part of the requirements established under subsection 10.1(2) of National Instrument 81-102, a provision that securityholders of the commodity pool shall not have the right to redeem their securities for a period up to six months after the date on which the receipt is issued for the initial prospectus of the commodity pool.

Required notice of redemption

6.2 Despite section 10.3 of National Instrument 81-102, a commodity pool may implement a policy providing that a person or company making a redemption order for securities shall receive the net asset value for those securities determined, as provided in the policy, on the first or second business day after the date of receipt by the commodity pool of the redemption order.

Payment of redemption proceeds

6.3 The references in subsection 10.4(1) of National Instrument 81-102 to "three business days" shall be read as references to "15 days" in relation to commodity pools.

PART 7 – CALCULATION OF NET ASSET VALUE

Non-application

7.1 Subsections 13.1(1) and (2) of National Instrument 81-102 do not apply to a commodity pool.

Calculation of net asset value

7.2 The net asset value of a commodity pool shall be calculated at least once each business day.

Toll-free telephone number, collect telephone calls and website

7.3 A commodity pool shall

- (a) have a toll-free telephone number, accept collect telephone calls, or operate a website, in order to allow persons or companies that wish to be provided with the most recent net asset value per unit of the commodity pool to obtain that information; and
- (b) make available its most recent net asset value per unit to persons or companies using a medium referred to in paragraph (a).

PART 8 – CONTINUOUS DISCLOSURE - FINANCIAL STATEMENTS

Variation of securities legislation

8.1 The provisions of securities legislation that pertain to the filing, content and sending to securityholders of financial statements for mutual funds are varied for commodity pools to the extent described in this Part.

Interim financial statements

8.2(1) Instead of filing and delivering interim financial statements on a semi-annual basis, a commodity pool shall, within 60 days of the date to which they are made up, file and deliver to each securityholder whose last address as shown on the books of the commodity pool is in the local jurisdiction, interim financial statements

- (a) if the commodity pool has not completed its first financial year, for the periods commencing with the beginning of that financial year and ending nine, six and three months before the date on which that year ends; and
- (b) if the commodity pool has completed its first financial year, for the periods beginning at the end of its last completed financial year and ending three, six and nine months after the end of the last completed financial year, together with, if applicable, comparative statements to the end of each of the corresponding periods in the last completed financial year.

8.2(2) Despite paragraph (1)(a), a commodity pool is not required to prepare, file or deliver interim financial statements for a period that is less than three months in length.

Income statements

8.3 In addition to any other matters required by securities legislation, the income statement forming part of the interim financial statements of a commodity pool shall include

- (a) the total amount of realized net gain or net loss on positions liquidated during the period;
- (b) the change in unrealized net gain or net loss on open positions during the period;
- (c) the total amount of net gain or net loss from all other transactions in which the commodity pool engaged during the period, including interest;
- (d) the total amount of all incentive fees paid during the period; and
- (e) the total amount of all brokerage commissions paid during the period.

Statements of portfolio transactions

8.4(1) A statement of portfolio transactions of a commodity pool shall provide disclosure, in the form of the table in subsection (2), of the aggregate total volume and total value or nominal value of all purchase and sale transactions of the commodity pool for

- (a) each security, by class or series, purchased or sold by the commodity pool during the period;
- (b) each physical commodity, purchased or sold by the commodity pool during the period; and
- (c) each derivative, by type of contract and underlying interest, for which a derivatives transaction was entered into by the commodity pool during the period.

8.4(2) The table contemplated by subsection (1) shall be in the following form:

	Total Volume	Total Value or Nominal Value
Purchases		
Sales		

Leverage disclosure

8.5(1) A commodity pool shall include in its interim financial statements and its audited financial statements disclosure of the minimum and maximum level of leverage experienced by the commodity pool in the period covered by the financial statements, together with a brief explanation of how the commodity pool uses the term "leverage" and the significance of the maximum and minimum levels of leverage to the commodity pool.

8.5(2) The information required by subsection (1) may be included in the body of the financial statements or in notes to the financial statements.

British Columbia commodity pools

8.6 In British Columbia, sections 8.1, 8.2, 8.3 and 8.5 do not apply to a commodity pool.

PART 9 – PROSPECTUS DISCLOSURE

Front page disclosure

9.1 In addition to any other requirements of securities legislation, the front page of a preliminary prospectus and prospectus of a commodity pool shall

(a) state, in substantially the following words:

"You should carefully consider whether your financial condition permits you to participate in the [commodity pool]. The securities of the [commodity pool] are [highly] speculative and involve a high degree of risk. You may lose a substantial portion or even all of the money you place in the [commodity pool].

The risk of loss in trading [nature of instruments to be traded by the commodity pool] can be substantial. In considering whether to participate in the [commodity pool], you should be aware that trading [nature of instruments] can quickly lead to large losses as well as gains. Such trading losses can sharply reduce the net asset value of the [commodity pool] and consequently the value of your interest in the [commodity pool]. Also, market conditions may make it difficult or impossible for the [commodity pool] to liquidate a position.

The [commodity pool] is subject to certain conflicts of interest.

The [commodity pool] will be subject to the charges payable by it as described in this prospectus that must be offset by revenues and trading gains before an investor is entitled to a return on his or her investment. It may be necessary for the [commodity pool] to make substantial trading profits to avoid depletion or exhaustion of its assets before an investor is entitled to a return on his or her investment.";

(b) state, for the initial prospectus of a commodity pool, in substantially the following words:

"The [commodity pool] is newly organized. The success of the [commodity pool] will depend upon a number of conditions that are beyond the control of the [commodity pool]. There is a substantial risk that the goals of the [commodity pool] will not be met.";

(c) state, if the promoter, manager, or a portfolio adviser of the commodity pool has not had a similar involvement with any other commodity pool, in substantially the following words:

"The [promoter], [manager] [and/or] [portfolio adviser] of the [commodity pool] has not previously operated any other publicly offered commodity pools [or traded other accounts].";

(d) state, if the commodity pool will execute trades outside of Canada, in substantially the following words:

"Participation in transactions in [nature of instrument to be traded by the commodity pool] involves the execution and clearing of trades on or subject to the rules of a foreign market.

None of the Canadian securities regulatory authorities or Canadian exchanges regulates activities of any foreign markets, including the execution, delivery and clearing of transactions, or has the power to compel enforcement of the rule of a foreign market or any applicable foreign laws. Generally, any foreign transaction will be governed by applicable foreign law. This is true even if the foreign market is formally linked to a Canadian market so that a position taken on the market may be liquidated by a transaction on another market.

Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs.

For these reasons, entities such as the commodity pool that trade [nature of instrument to be traded by the commodity pool] may not be afforded certain of the protective measures provided by Canadian legislation and the rules of Canadian exchanges. In particular, funds received from customers for transactions may not be provided the same protection as funds received in respect of transactions on Canadian exchanges.";

(e) state, immediately after the statements required by paragraphs (a), (b), (c), and (d), in substantially the following words:

"These brief statements do not disclose all the risks and other significant aspects of investing in the [commodity pool]. You should therefore carefully study this prospectus, including a description of the principal risk factors at page [page number], before you decide to invest in the [commodity pool].";

(f) if applicable, state that the tax consequences to the commodity pool or its securityholders are not certain; and

(g) state that the commodity pool is a mutual fund but that certain provisions of securities legislation designed to protect investors who purchase securities of mutual funds do not apply.

Prospectus disclosure

9.2 In addition to any other requirements of securities legislation, the preliminary prospectus and prospectus of a commodity pool shall

(a) disclose the fundamental investment objectives and strategy of the commodity pool, and how specified derivatives are or will be used in connection with those objectives and that strategy;

(b) disclose any limitations on the use of specified derivatives by the commodity pool contained in the constating documents, or forming part of the fundamental investment objectives or investment strategy, of the commodity pool, including

(i) whether the commodity pool has adopted any restrictions on the amount of leverage that the commodity pool may experience at any time, or if there are no such restrictions, a statement to that effect,

(ii) a brief explanation of how the commodity pool uses the term "leverage" and the significance to the commodity pool of the restrictions either adopted or not adopted, and

(iii) a cross-reference to the disclosure required by section 8.5 to be included in the financial statements of the commodity pool;

(c) disclose the risks associated with the use or intended use by the commodity pool of specified derivatives and the policies and practices of the commodity pool to manage those risks;

(d) disclose any existing or potential conflicts of interest between the commodity pool and any promoter, manager, adviser, dealer, broker, any of their respective associates or affiliates, or any of the officers, directors or partners of any of the foregoing, and the steps that will be taken to alleviate any existing or potential conflicts of interest;

(e) disclose whether an affiliate of the manager or of a portfolio adviser of the commodity pool receives or will receive brokerage commissions arising from trades of the commodity pool;

(f) disclose if the commodity pool will be wound up without the approval of securityholders if the net asset value per security falls below a certain predetermined level, and, if so, the net asset value per security at which this will occur;

(g) provide the disclosure concerning the past performance of the commodity pool that is required to be provided by a mutual fund under Item 11 of Part B of Form 81-101F1 Contents of Simplified Prospectus, except that

(i) the past performance of the commodity pool in the bar chart prepared in accordance with Item 11.2 of Part B of Form 81-101F1, shall show quarterly, non-annualized, returns of the commodity pool over the period provided for in Item 11.2, rather than annual returns, and

(ii) the commodity pool may at its option, in the disclosure required by Items 11.3 and 11.4 of Part B of Form 81-101F1, compare its performance to an index if it describes any differences between the commodity pool and the index that affect the comparability of the performance data of the commodity pool and the index;

(h) include a statement that how the commodity pool performed in the past does not necessarily indicate how it will perform in the future;

(i) describe the financial reporting that is required of the commodity pool;

(j) in addition to the front page disclosure required by paragraph 9.1(g), disclose that certain provisions of securities legislation designed to protect investors who purchase securities of mutual funds do not apply to the commodity pool, and disclose the implications of this;

(k) describe the redemption procedures and requirements of the commodity pool, making specific reference to the adoption of any policies established under this Instrument or National Instrument 81-102;

(l) disclose, in the "Risk Factor" section, any information that may bear on a securityholder's assessment of risk associated with an investment in the commodity pool, including

(i) any risks associated with those commodity pools structured as trusts that purchasers of the securities offered may become liable to make an additional contribution beyond the price of the securities, and

(ii) any risks associated with the loss of limited liability of a limited partner of a commodity pool that is structured as a limited partnership;

(m) provide the disclosure concerning the portfolio management of the commodity pool that is required to be provided by a mutual fund under Item 10.3 of Form 81-101F2 Contents of Annual Information Form;

(n) disclose the details of how persons or companies may obtain the most recent net asset value per unit of the commodity pool, as required by section 7.3; and

(o) disclose the details of compliance of the commodity pool with the requirements of sections 3.2 and 3.3.

Financial statements

9.3(1) A preliminary prospectus and prospectus of a commodity pool shall contain the financial statements of the commodity pool for the time periods that are required by the securities legislation applicable to issuers other than mutual funds.

9.3(2) The financial statements required by subsection (1) shall be prepared in accordance with the requirements of Part 8.

British Columbia commodity pools

9.4 In British Columbia, section 9.3 does not apply to a commodity pool.

PART 10 – EXEMPTION

Exemption

10.1(1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

10.1(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

PART 11 – EFFECTIVE DATE AND TRANSITIONAL

Effective date

11.1 This Instrument comes into force on November 1, 2002.

Prospectus disclosure

11.2 The prospectus of a commodity pool for which a receipt is obtained before the date that this Instrument comes into force is not required to comply with the disclosure requirements of this Instrument.

Citation

11.3 This rule may be cited or referred to as either MSC Rule 2002-3 or Multilateral Instrument 81-104.