

THE MANITOBA SECURITIES COMMISSION
MSC RULE 2021-21
(Section 149.1, The Securities Act)

**AMENDMENTS TO NATIONAL INSTRUMENT 81-107 INDEPENDENT REVIEW COMMITTEE
FOR INVESTMENT FUNDS**

1. *National Instrument 81-107 Independent Review Committee for Investment Funds is amended by this Instrument.*

2. *Subsection 1.1 is amended by adding the following after subsection (2):*

(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..

3. *Paragraph 5.2(1)(b) is replaced 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 is amended*

(a) *by replacing “is quoted; or” at the end of clause (1)(a)(i)(C) with “is quoted, or”,*

(b) *by adding the following after clause (1)(a)(i)(C):*

(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,

(c) *by deleting “and” after paragraph (1)(a),*

(d) *by adding the following after paragraph (1)(a):*

(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 in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, or

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

(e) *by replacing subsection (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.,

(f) by adding the following after subsection (2):

(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 National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.,

(g) by replacing subsection (3) with the following:

(3) With respect to a purchase or sale of a security referred to in subsection (2), National Instrument 21-101 *Marketplace Operation*, and Parts 6 and 8 of National Instrument 23-101 *Trading Rules*, 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.,

(h) by replacing subsection (4) with the following:

(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., *and*

(i) by replacing subsection (5) with the following:

(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 is replaced with the following:*

(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 securities regulatory authority or regulator.

(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 National Instrument 81-102 *Investment Funds*.

6. *The Instrument is amended by adding the following sections:*

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 National Instrument 44-101 *Short Form Prospectus Distributions*,

(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 securities regulatory authority or regulator.

(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 National Instrument 81-102 *Investment Funds*.

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 National Instrument 44-101 *Short Form Prospectus Distributions*,

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

(vii) at least two purchasers that are arm’s length purchasers, including, for greater certainty, “independent underwriters” within the meaning of National Instrument 33-105 *Underwriting Conflicts*, 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 securities regulatory authority or regulator.

(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 National Instrument 81-102 *Investment Funds*.

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 National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

(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 Inter-Fund Self-Dealing Conflict of Interest Provisions 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 National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> and section 4.2 of National Instrument 81-102 <i>Investment Funds</i>
British Columbia	Paragraph 13.5(2)(b) of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> and section 4.2 of National Instrument 81-102 <i>Investment Funds</i>
Manitoba	Paragraph 13.5(2)(b) of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> and section 4.2 of National Instrument 81-102 <i>Investment Funds</i>
New Brunswick	Paragraph 144(1)(b) of the <i>Securities Act</i> (New Brunswick) Subsection 11.7(6) of Local Rule 31-501 <i>Registration Requirements</i> Paragraph 13.5(2)(b) of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> and section 4.2 of National Instrument 81-102 <i>Investment Funds</i>
Newfoundland and Labrador	Paragraph 119(2)(b) of the <i>Securities Act</i> (Newfoundland and Labrador) Subsection 103(6) of Reg. 805/96 Paragraph 13.5(2)(b) of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> and section 4.2 of National Instrument 81-102 <i>Investment Funds</i>
Northwest Territories	Paragraph 13.5(2)(b) of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> and section 4.2 of National Instrument 81-102 <i>Investment Funds</i>
Nova Scotia	Paragraph 126(2)(b) of the <i>Securities Act</i> (Nova Scotia)

	<p>Subsection 32(6) of the General Securities Rules</p> <p>Paragraph 13.5(2)(b) of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> and section 4.2 of National Instrument 81-102 <i>Investment Funds</i></p>
Nunavut	<p>Paragraph 13.5(2)(b) of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> and section 4.2 of National Instrument 81-102 <i>Investment Funds</i></p>
Ontario	<p>Paragraph 13.5(2)(b) of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> and section 4.2 of National Instrument 81-102 <i>Investment Funds</i></p>
Prince Edward Island	<p>Paragraph 13.5(2)(b) of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> and section 4.2 of National Instrument 81-102 <i>Investment Funds</i></p>
Quebec	<p>Paragraph 13.5(2)(b) of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> and section 4.2 of National Instrument 81-102 <i>Investment Funds</i></p>
Saskatchewan	<p>Paragraph 13.5(2)(b) of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> and section 4.2 of National Instrument 81-102 <i>Investment Funds</i></p>
Yukon	<p>Paragraph 13.5(2)(b) of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> and section 4.2 of National Instrument 81-102 <i>Investment Funds</i></p>

Effective Date

8.(1) This Instrument comes into force on January 5, 2022.

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

8.(3) This Instrument may be cited as MSC Rule 2021-21.