CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

# CSA Notice of Amendments to National Instrument 81-102 *Mutual Funds*, National Instrument 81-106 *Investment Fund Continuous Disclosure*, National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, National Instrument 41-101 *General Prospectus Requirements* and Related Consequential Amendments

**June 19, 2014**

## Introduction

The Canadian Securities Administrators (the CSA or we) are adopting amendments (the Amendments) to the following rules, as part of Phase 2 of the CSA's implementation of the Modernization of Investment Fund Product Regulation Project (the Modernization Project):

- National Instrument 81-102 *Mutual Funds* (NI 81-102);
- National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106);
- National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101);
- National Instrument 41-101 *General Prospectus Requirements* (NI 41-101).

The references above to a national instrument include its form(s).

The CSA are also making changes (the Related Changes) to Companion Policy 81-102CP to National Instrument 81-102 *Mutual Funds* (81-102CP) and to Companion Policy 81-106CP to National Instrument 81-106 *Investment Fund Continuous Disclosure* (81-106CP).

Related consequential amendments and changes (collectively, the Consequential Amendments) set out in Annexes G to K are also being made to reflect the change in the title of NI 81-102.

Subject to Ministerial approval requirements, the Amendments, the Related Changes and the Consequential Amendments come into force on September 22, 2014.

## Background

The mandate of the Modernization Project is to review the product regulation of publicly offered investment funds and to consider whether our current regulatory approach sufficiently addresses product and market developments in the Canadian investment fund industry, and continues to adequately protect investors. The types of investment funds included in the Modernization Project are publicly offered mutual funds and non-redeemable investment funds (including exchange-traded investment funds).

In Phase 1 of the Modernization Project the CSA focused primarily on publicly offered mutual funds to codify exemptive relief that had been frequently granted in recognition of market and product developments. As well, we made amendments to keep pace with developing global standards in mutual fund product regulation, notably introducing maturity restrictions and liquidity requirements for money market mutual funds. The Phase 1 amendments came into force on April 30, 2012, except for the provisions relating to money market funds, which came into force on October 30, 2012.

The objective of Phase 2 of the Modernization Project is to identify and address any market efficiency, investor protection and fairness issues that arise out of the differing regulatory regimes that apply to publicly offered mutual funds and non-redeemable investment funds. The aim is to achieve fair and consistent product regulation across the spectrum of retail investment funds.

The Amendments, the Related Changes and the Consequential Amendments were published for comment on March 27, 2013 (the 2013 Proposal). They have three key components:

1) the introduction of core investment restrictions and fundamental operational requirements for non-redeemable investment funds;

2) enhanced disclosure requirements regarding securities lending activities by investment funds, to better highlight the costs, benefits and risks, and keep pace with developing global standards in the regulation, of these activities; and

3) the creation of a more comprehensive alternative funds framework to be effected through amendments to National Instrument 81-104 *Commodity Pools* (NI 81-104) (the Alternative Funds Proposals).

On June 25, 2013, the CSA published CSA Staff Notice 11-324 *Extension of Comment Period* (CSA Staff Notice 11-324), which extended the comment period on the 2013 Proposal from June 25, 2013 to August 23, 2013.

In CSA Staff Notice 11-324, we advised that the CSA will consider the Alternative Funds Proposals at a later date, in conjunction with certain investment restrictions for non-redeemable investment funds proposed as part of the 2013 Proposal that we consider to be interrelated with the Alternative Funds Proposals (the Interrelated Investment Restrictions). The Interrelated Investment Restrictions include the proposed restrictions in the 2013 Proposal on investments in physical commodities, short selling, the use of derivatives and borrowing cash.

Accordingly, the Amendments being adopted at this time address the first two components of this Phase of the Modernization Project listed above, and specifically focus on introducing fundamental investment restrictions and operating requirements for non-redeemable investment funds, as well as new disclosure requirements with respect to securities lending by all investment funds (the Securities Lending Disclosure Requirements).

**Substance and Purpose of the Amendments**

The Amendments introduce fundamental investment restrictions and operating requirements for non-redeemable investment funds, as well as the Securities Lending Disclosure Requirements. The Amendments and the Related Changes also include a number of minor drafting changes generally intended to clarify and update NI 81-102 and 81-102CP.

**(i) Investment Restrictions**

***Control Restriction***

The Amendments extend the application of section 2.2 of NI 81-102 to non-redeemable investment funds. Section 2.2 of NI 81-102, among other things, restricts the amount of securities of an issuer that an investment fund may purchase to 10% of the outstanding equity securities of that issuer.

Moreover, section 2.2 of NI 81-102 restricts an investment fund from purchasing a security for the purpose of exercising control over the issuer of the security. The CSA have added section 3.2.1 to 81-102CP to provide guidance on how the CSA will generally interpret control for the purposes of section 2.2 of NI 81-102. This guidance is intended to apply only to the interpretation of control for the purposes of this section.

The application of section 2.2 of NI 81-102 to non-redeemable investment funds is intended to restrict investments that the CSA view to be inconsistent with the fundamental characteristics of investment funds as investment vehicles which generally do not become actively involved in the management of their investee companies.

While new non-redeemable investment funds must comply with section 2.2 of NI 81-102 as of September 22, 2014, for existing non-redeemable investment funds that are reporting issuers, the Amendments relating to section 2.2 come into force on March 21, 2016. See "Transition Periods and Grandfathering".

***Investments in Real Property and Loan Syndications***

The Amendments introduce paragraphs 2.3(2)(a) and (c) of NI 81-102, which restrict a non-redeemable investment fund from purchasing real property, or an interest in certain loan syndications or loan participations, respectively. These restrictions are meant to limit activities which the CSA view as inconsistent with the fundamental characteristics of publicly offered investment funds.

While new non-redeemable investment funds must comply with paragraphs 2.3(2)(a) and (c) of NI 81-102 as of September 22, 2014, existing non-redeemable investment funds that are reporting issuers are not required to comply with paragraphs 2.3(2)(a) and (c) until March 21, 2016. See "Transition Periods and Grandfathering".

***Investments in Mortgages***

The Amendments introduce paragraph 2.3(2)(b) of NI 81-102, which restricts a non-redeemable investment fund from purchasing a mortgage other than a guaranteed mortgage (as defined in NI 81-102). This restriction reflects the CSA's general view that investments in non-guaranteed mortgages are inconsistent with the nature of a publicly offered investment fund, as such investments may be akin to engaging in a lending business, which is generally outside of the scope of portfolio management typically engaged in by publicly offered investment funds.

In response to the comments received on this section, the Amendments specify that paragraph 2.3(2)(b) of NI 81-102 does not apply to a non-redeemable investment fund that has filed a prospectus for which a receipt was issued on or before September 22, 2014 and which has adopted fundamental investment objectives to permit it to invest in mortgages. See "Transition Periods and Grandfathering" below.

For greater clarity, paragraph 2.3(2)(b) of NI 81-102 does not relate to or impact National Policy 29 *Mutual Funds Investing in Mortgages*, which applies to a small number of mutual funds whose existence predates the coming-into-force of NI 81-102.

***Fund-of-Fund Structures***

The Amendments permit a non-redeemable investment fund to invest in another investment fund provided the investment complies with the requirements of subsection 2.5(2) of NI 81-102 applicable to non-redeemable investment funds. Other than new paragraphs 2.5(2)(a.1) and (c.1) of NI 81-102, these requirements are the same as the fund-of-fund requirements applicable to mutual funds.

Under paragraph 2.5(2)(a.1) of NI 81-102, the underlying investment fund must be subject to NI 81-102 or must comply with the provisions of NI 81-102 applicable to a non-redeemable investment fund. This requirement is meant to give flexibility to non-redeemable investment funds to continue using their traditional fund-of-fund structures, which generally involve investing all or substantially all of their assets in a mutual fund which, although a reporting issuer, is not subject to NI 81-102, while still achieving the CSA's objective of ensuring the fund-of-fund structure does not permit investments indirectly by a non-redeemable investment fund that are not permissible directly.

Under paragraph 2.5(2)(c.1) of NI 81-102, the underlying investment fund must be a reporting issuer in at least one Canadian jurisdiction in which the non-redeemable investment fund is a reporting issuer. This requirement is intended to ensure that the underlying fund is subject to the CSA's continuous disclosure regime in NI 81-106, and to permit securityholders of the non-redeemable investment fund to readily access information about the underlying fund.

The CSA recognize that there are a limited number of existing non-redeemable investment funds that invest in foreign investment funds, which may not comply with paragraphs 2.5(2)(a.1) or (c.1) of NI 81-102. The CSA will consider applications on a case-by-case basis for exemptive relief on behalf of such non-redeemable investment funds to permit them to continue investing in foreign underlying funds.

In addition to the new requirements applicable to non-redeemable investment funds, we have amended subsection 2.5(2) of NI 81-102 to codify the CSA's view that a mutual fund may not invest in a non-redeemable investment fund. For those mutual funds which currently invest in non-redeemable investment funds, the CSA will consider applications on a case-by-case basis for exemptive relief to permit them to continue investing in such underlying funds.

While new investment funds must comply with section 2.5 of NI 81-102 as of September 22, 2014, for existing investment funds that are reporting issuers, the Amendments relating to section 2.5 come into force on March 21, 2016. See "Transition Periods and Grandfathering".

***Securities Lending, Repurchases and Reverse Repurchases***

The Amendments extend the framework for securities lending, repurchase and reverse repurchase transactions in sections 2.12 to 2.17 of NI 81-102 to non-redeemable investment funds.

The Amendments further amend paragraphs 2.12(1)12 and 2.13(1)11 of NI 81-102 to specify that the aggregate market value of securities loaned under securities lending transactions or sold in repurchase transactions by an investment fund must not exceed an amount equal to 50% of the investment fund's net asset value (NAV).[1] This amendment is intended to offset the effect of leverage employed by non-redeemable investment funds, whereby a non-redeemable investment fund's total assets may be substantially greater than its NAV. The CSA do not expect this amendment to have a material effect on mutual funds, as mutual funds are generally not permitted to employ leverage and their liabilities are generally not significant relative to their total assets.

While new non-redeemable investment funds must comply with sections 2.12 to 2.17 of NI 81-102 as of September 22, 2014 for existing non-redeemable investment funds that are reporting issuers, the Amendments relating to these sections come into force on September 21, 2015. See "Transition Periods and Grandfathering".

**(ii) Conflicts of Interest**

The Amendments extend the conflicts of interest provisions of Part 4 of NI 81-102 to non-redeemable investment funds. The introduction of these provisions extends key protections to securityholders of non-redeemable investment funds.

**(iii) Fundamental Changes**

The Amendments extend the application of the securityholder and regulatory approval requirements of Part 5 of NI 81-102 to non-redeemable investment funds. The introduction of these provisions extends key protections to securityholders of non-redeemable investment funds.

[1] Prior to the coming into force of the Amendments, the requirement is that the aggregate market value of securities loaned or sold not exceed an amount equal to 50% of the fund's *total assets*.

***New Securityholder Approval Requirements***

In addition to the existing securityholder approval requirements in section 5.1 of NI 81-102, the Amendments introduce paragraph 5.1(1)(h) of NI 81-102, which requires that prior securityholder approval be obtained to implement a specified change to the nature or structure of an investment fund; specifically, any change that would convert a mutual fund into a non-redeemable investment fund, convert a non-redeemable investment fund into a mutual fund, or convert an investment fund into an issuer that is not an investment fund. The Amendments further introduce subsection 5.1(2) of NI 81-102 which specifies that an investment fund must not bear the costs and expenses to implement a change contemplated by paragraph 5.1(1)(h) of NI 81-102. These provisions reflect the CSA's view that changing the nature or structure of an investment fund is a fundamental change, and investors should be given the same securityholder approval rights as when an investment fund in which they invest is reorganized by way of merger.

***Exemption from Securityholder Approval Requirement for Flow-Through Funds***

The Amendments introduce paragraph 5.3(2)(b) and subsection 5.6(1.1) of NI 81-102, which provide exemptions from the securityholder and regulatory approval requirements, respectively, for fund mergers involving specialized non-redeemable investment funds that have a limited term and that do not list or trade their securities on a secondary market. These non-redeemable investment funds are typically organized as limited partnerships and have the investment objective of providing returns through tax-assisted investments in "flow-through" shares issued by resource companies. In order to avail itself of the exemptions in paragraph 5.3(2)(b) and subsection 5.6(1.1) of NI 81-102, a non-redeemable investment fund must satisfy certain requirements, including tailored prospectus disclosure.

***New Conditions for Pre-Approved Fund Mergers***

In addition to the current conditions in subsection 5.6(1) of NI 81-102, the Amendments introduce, as a condition to effect a merger of a non-redeemable investment fund with another investment fund without securityholder or regulatory approval, a requirement that the non-redeemable investment fund permit securityholders to redeem securities of the fund at a price equal to the NAV of those securities at a date that is before the effective date of the merger. See paragraph 5.6(1)(j) of NI 81-102. The CSA consider the ability to exit the fund at NAV to mitigate the need for securityholder approval.

The Amendments also introduce paragraph 5.6(1)(k) of NI 81-102, which requires that a merger involving an investment fund be effected at NAV as a condition of the merger proceeding without securityholder or regulatory approval. This condition helps to lessen potential conflicts of interest where investment funds under common management are merged.[2]

[2] The TSX Company Manual contains a similar condition for fund mergers to be implemented without securityholder approval.

***Termination of Non-Redeemable Investment Funds***

The Amendments introduce section 5.8.1 of NI 81-102, which requires a non-redeemable investment fund to terminate no earlier than 15 days and no later than 90 days after filing a press release disclosing the intended termination. This provision is intended to give investors sufficient time to consider the consequences of the termination, while also requiring that money be repaid promptly to investors if a non-redeemable investment fund is terminating, as any secondary market liquidity can be expected to decline significantly after the termination of the fund is disclosed.

**(iv) Custodianship Requirements**

The Amendments update the drafting in Part 6 of NI 81-102 and extend the NI 81-102 requirements to non-redeemable investment funds.[3] There are no substantive changes to the custodianship requirements for investment funds, other than requiring all non-redeemable investment funds which are reporting issuers, rather than only those that have filed a prospectus under NI 41-101, to comply with the custodianship requirements. Part 14 of NI 41-101 will remain in order to maintain the custodianship requirements for scholarship plans.

**(v) Sale of Securities**

The Amendments introduce subsection 9.3(2) of NI 81-102, which requires that issuances of securities of an exchange-traded mutual fund that is not in continuous distribution, or of a non-redeemable investment fund, not cause dilution to existing securityholders. This subsection parallels the requirement in NI 81-102 that mutual funds issue their securities at NAV.

In addition, section 10.6 of 81-102CP has been added to provide guidance on how the CSA will interpret the requirement in subsection 9.3(2) of NI 81-102.

**(vi) Warrant Offerings**

The Amendments introduce Part 9.1 of NI 81-102, which restricts an investment fund from issuing warrants or rights, or from entering into a position in a specified derivative the underlying interest of which is a security of the investment fund. The CSA are of the view that the potential harm to non-redeemable investment fund securityholders from the dilution caused by warrant or rights offerings generally outweighs any benefit of such offerings.

**(vii) Redemptions**

The Amendments extend many of the requirements in Part 10 of NI 81-102 to non-redeemable investment funds. These requirements include:

- sending investors an annual reminder of the procedures for exercising redemptions to better inform investors of their liquidity options (subsection 10.1(3) of NI 81-102);

[3] Non-redeemable investment funds that are reporting issuers and have filed a prospectus under NI 41-101 are currently subject to the custodian requirements in Part 14 of NI 41-101.

- not redeeming securities at a price that is greater than the NAV of the securities on the redemption date, to avoid dilution to remaining securityholders (subsection 10.3(4) of NI 81-102);

- having to pay redemption proceeds no more than 15 business days after the redemption is effected, to ensure that investors promptly receive their redemption proceeds (subsection 10.4(1.2) of NI 81-102); and

- only permitting suspensions of redemptions if the requirements in section 10.6 of NI 81-102 are met.

Non-redeemable investment funds will also be required to include certain disclosure regarding their redemption procedure in their prospectus, such as the amounts that may be deducted from the NAV per security in connection with the payment of redemption proceeds to redeeming securityholders. See Item 15.1(2) of Form 41-101F2.

**(viii) Commingling of Cash**

The Amendments extend the application of Part 11 of NI 81-102 so that the provisions relating to the holding of monies from sales and redemptions of securities will apply to non-redeemable investment funds. However, the Amendments contain an exemption in subsection 11.4(1.3) of NI 81-102 from certain of these requirements for CDS Clearing and Depository Services Inc., similar to the exemption currently provided to members of the Investment Industry Regulatory Organization of Canada.

**(ix) Sales Communications**

The Amendments extend the provisions in Part 15 of NI 81-102 to sales communications of non-redeemable investment funds, with modifications that recognize differences between mutual funds and non-redeemable investment funds. These new requirements for non-redeemable investment funds ensure that sales communications to retail investors provide relevant information and are not misleading. The provisions of Part 15 of NI 81-102 applicable to non-redeemable investment funds do not impact or negate the restrictions applicable during the waiting period and the period between the issuance of the receipt for the final prospectus and the closing of the prospectus offering.

Section 15.6 of NI 81-102 has also been amended such that a mutual fund that was converted from a non-redeemable investment fund must, if it wishes to present performance data, present past performance data for the period when it existed as a non-redeemable investment fund. This requirement is intended to ensure that the performance data presented is objective and consistent for mutual funds and non-redeemable investment funds, and is consistent with the continuous disclosure requirements in NI 81-106.

Notwithstanding the Amendments relating to Part 15 of NI 81-102, existing non-redeemable investment funds may use sales communications which were printed before September 22, 2014 until March 23, 2015. See “Transition Periods and Grandfathering”.

**(x) Securities Lending Disclosure Requirements**

The Amendments introduce new disclosure requirements for both mutual funds and non-redeemable investment funds in respect of their securities lending activities.[4] The Securities Lending Disclosure Requirements comprise amendments to NI 81-106, NI 41-101 and NI 81-101 and have been drafted in response to the comments received on the 2013 Proposal.

***Financial Statement Disclosure***

The Securities Lending Disclosure Requirements introduce subsections 3.8(4) and (5) of NI 81-106, which require disclosure, in the notes to the financial statements, of a reconciliation of the gross amount generated from the securities lending transactions of the investment fund to the revenue from securities lending disclosed under item 4 of section 3.2 of NI 81-106. This disclosure must include, among other things, the identity of each person or company who was entitled to receive payments out of the gross amount generated from the securities lending transactions of the investment fund and the amount each such recipient was entitled to receive.

The purpose of this disclosure requirement is to better highlight the costs and returns of an investment fund's securities lending activities. Currently, the disclosure generally provided in the financial statements of an investment fund with respect to its securities lending activities does not provide information regarding the revenue sharing arrangement between the fund and its securities lending agent. Accordingly, it is not determinable, from the disclosure currently provided, what amounts are received by the securities lending agent out of the amount generated from an investment fund's securities lending activities. The CSA are of the view that such information is important and should be available to investment fund securityholders, particularly where the securities lending agent is an affiliate of the manager or where it provides other services to the investment fund (e.g., custodial services), as the fees otherwise charged to the fund by the manager or the service provider may be reduced as a result of receiving a portion of the amount generated from the securities lending activities. In this way, the true cost of owning securities of the investment fund would be hidden from securityholders.

***Prospectus and Annual Information Form Disclosure***

In addition to the disclosure in the notes to the financial statements, the Securities Lending Disclosure Requirements introduce requirements to disclose the name of the securities lending agent of an investment fund in the investment fund's prospectus, as well as the relationship of the securities lending agent to the investment fund's manager. Moreover, an investment fund will be required to disclose, in its prospectus or annual information form, as applicable, a description of the essential terms of any agreement with the securities lending agent. See new Item 19.11 of Form 41-101F2 and Item 10.9.1 of Form 81-101F2.

The CSA are of the view that this disclosure will highlight any potential conflicts of interest where the securities lending agent is related to the manager of the investment fund, particularly

[4] In the CSA jurisdictions other than Alberta, British Columbia, Manitoba and Newfoundland and Labrador, NI 81-106 also applies to certain mutual funds that are not reporting issuers (see subsections 1.2(1) and (2) of NI 81-106). Therefore, the amendments to NI 81-106 which relate to the Securities Lending Disclosure Requirements will also apply to such mutual funds.

with respect to any revenue sharing arrangement between the investment fund and the securities lending agent.

**(xi) Amendments that Impact Mutual Funds**

While the Amendments focus on introducing operational requirements for non-redeemable investment funds, there are provisions in the Amendments that impact mutual funds. In addition to the Securities Lending Disclosure Requirements, these provisions include:

- amended subsection 2.5(2) of NI 81-102, which restricts a mutual fund from investing in a non-redeemable investment fund (see "(i) Investment Restrictions – Fund-of-Fund Structures" above);

- amended sections 2.11 and 2.17 of NI 81-102, which require an exchange-traded mutual fund that is not in continuous distribution to issue a news release if the fund intends to begin using specified derivatives, short selling and entering into securities lending, repurchases and reverse repurchases transactions (see "(i) Investment Restrictions – Securities Lending, Repurchases and Reverse Repurchases" above);

- amended paragraphs 2.12(1)12 and 2.13(1)11 of NI 81-102, which limit the amount of securities loaned or sold in repurchase transactions by a mutual fund to 50% of NAV, rather than 50% of total assets, excluding the collateral delivered to the fund (see "(i) Investment Restrictions – Securities Lending, Repurchases and Reverse Repurchases" above);

- amended paragraph 5.1(1)(g) of NI 81-102, which broadens the securityholder approval requirements to require securityholder approval for a merger of a mutual fund with any issuer, rather than a merger with another mutual fund;

- new paragraph 5.1(1)(h) of NI 81-102, which requires that a mutual fund that wishes to implement a change, which restructures the fund into a non-redeemable investment fund or an issuer that is not an investment fund, to obtain prior securityholder approval (see "(iii) Fundamental Changes – New Securityholder Approval Requirements" above);

- new paragraph 5.6(1)(k) of NI 81-102, which adds a new condition that, for a fund merger to be effected without prior securityholder or regulatory approval, the consideration offered to securityholders of the investment fund must have a value that is equal to the NAV of the fund (see "(iii) Fundamental Changes – New Conditions for Pre-Approved Fund Mergers" above);

- new subsection 9.3(2) of NI 81-102, which prevents an exchange-traded mutual fund that is not in continuous distribution from dilutive issuances of securities (see "(v) Sale of Securities" above);

- new section 9.1.1 of NI 81-102, which restricts the issuance of warrants and similar instruments by all investment funds (see "(vi) Warrant Offerings" above);

- new subsections 10.4(1.3) and 10.6(2) of NI 81-102, which require an exchange-traded mutual fund that is not in continuous distribution to pay redemption proceeds no more than 15 business days after the redemption is effected, unless the redemptions of the fund have been suspended in accordance with the requirements in section 10.6; and

- amended section 15.6 of NI 81-102, which requires a mutual fund that was converted from a non-redeemable investment fund, if it wishes to present performance data, to present past performance data for the period when it existed as a non-redeemable investment fund (see "(ix) Sales Communications" above).

**(xii) Other**

The Amendments and Related Changes include a number of minor drafting changes generally intended to clarify and update NI 81-102 and 81-102CP.

The key changes made to the 2013 Proposal since its publication for comment are discussed in detail in the Summary of Changes in Annex A to this Notice.

**Summary of Written Comments Received by the CSA**

We received submissions from 49 commenters on the 2013 Proposal. We have considered all comments received and thank all commenters for their input. A summary of their comments, together with our responses, is contained in Annex B to this Notice.

As discussed in CSA Staff Notice 11-324, the CSA are not addressing the Alternative Funds Proposals and the Interrelated Investment Restrictions in the Amendments. Accordingly, Annex B does not include a summary of comments received on the Alternative Funds Proposals or on the Interrelated Investment Restrictions. A summary of those comments and the CSA's responses to those comments will be published at a later date concurrently with any proposed amendments to NI 81-104 and NI 81-102.

**Summary of Changes to the 2013 Proposal**

After considering the comments received, we have made some revisions to the materials that were published for comment under the 2013 Proposal. Those revisions are reflected in the amending instruments we are publishing as Annexes C to K to this Notice. As these changes are not material, we are not republishing the Amendments for a further comment period. See Annex A to this Notice for a summary of the key changes made to the 2013 Proposal.

**Transition Periods and Grandfathering**

The CSA are providing transition periods for existing investment funds to comply with certain provisions of the Amendments.

***Control Restriction***

Existing non-redeemable investment funds that are reporting issuers will not be required to comply with section 2.2 of NI 81-102 until March 21, 2016. See paragraph 101(1)(b) of Schedule C-1 to this Notice.

***Investments in Real Property and Loan Syndications***

Existing non-redeemable investment funds that are reporting issuers will not be required to comply with paragraphs 2.3(2)(a) and (c) of NI 81-102 until March 21, 2016. See paragraph 101(1)(b) of Schedule C-1 to this Notice.

***Non-guaranteed Mortgage Investments***

After reviewing the comments received, the CSA are introducing subsection 20.4(2) of NI 81-102, which grandfathers existing non-redeemable investment funds, which are reporting issuers and have adopted fundamental investment objectives to permit them to invest in mortgages, from the requirement of paragraph 2.3(2)(b) of NI 81-102.

Notwithstanding this grandfathering provision, the CSA will continue to focus on investments in non-guaranteed mortgages in the prospectus reviews of any subsequent issuances of securities by non-redeemable investment funds relying on the grandfathering provided by subsection 20.4(2) of NI 81-102.

***Fund-of-Fund Structures***

Existing non-redeemable investment funds that are reporting issuers will not be required to comply with section 2.5 of NI 81-102 until March 21, 2016. Existing mutual funds will not be required to comply with section 2.5, as amended by the Amendments, until March 21, 2016. See paragraph 101(1)(b) and subsection 101(2) of Schedule C-1 to this Notice.

***Securities Lending, Repurchases and Reverse Repurchases***

Existing non-redeemable investment funds that are reporting issuers will not be required to comply with sections 2.12 to 2.17 of NI 81-102 until September 21, 2015. See paragraph 101(1)(a) of Schedule C-1 to this Notice.

The CSA are introducing section 18.5.2 of NI 81-106, which states that investments funds will not be required to comply with the amendments to NI 81-106, which relate to the Securities Lending Disclosure Requirements for financial years beginning before January 1, 2016. The purpose of this transition period is to give investment funds adequate time to begin tracking the information required to be disclosed by new subsections 3.8(4) and (5) of NI 81-106 on a comparative basis.

***Sales Communications***

The CSA are also providing a six-month transition period for existing non-redeemable investment funds to continue to use sales communications (other than advertisements) prepared

prior to the coming-into-force date of the Amendments. See subsection 101(3) of Schedule C-1 to this Notice.

**Materials Published**

The following annexes are attached to this notice:

Annex A: Summary of Changes to the 2013 Proposal

Annex B: Summary of Public Comments and CSA Responses

Annex C: Amendments to National Instrument 81-102 *Mutual Funds* and Changes to Companion Policy 81-102CP to National Instrument 81-102 *Mutual Funds*

- Schedule C-1: Amendments to National Instrument 81-102 *Mutual Funds*
- Schedule C-2: Blackline Showing Changes to Companion Policy 81-102CP to National Instrument 81-102 *Mutual Funds*

Annex D: Amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure* and Changes to National Instrument 81-106CP to National Instrument 81-106 *Investment Fund Continuous Disclosure*

- Schedule D-1: Amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure*
- Schedule D-2: Changes to National Instrument 81-106CP to National Instrument 81-106 *Investment Fund Continuous Disclosure*

Annex E: Amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*

Annex F: Amendments to National Instrument 41-101 *General Prospectus Requirements*

Annex G: Amendments to National Instrument 81-107 *Independent Review Committee for Investment Funds* and Changes to Commentary in National Instrument 81-107 *Independent Review Committee for Investment Funds*

- Schedule G-1: Amendments to National Instrument 81-107 *Independent Review Committee for Investment Funds*
- Schedule G-2: Changes to Commentary in National Instrument 81-107 *Independent Review Committee for Investment Funds*

Annex H: Amendments to Specified Instruments (Change in Name of National Instrument 81-102 *Mutual Funds*)

Annex I: Changes to Companion Policy 81-104CP to National Instrument 81-104 *Commodity Pools*

Annex J: Changes to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

Annex K: Changes to National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*

Annex L: Local Matters

**Questions**

Please refer your questions to any of the following:


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## ANNEX A

## SUMMARY OF CHANGES TO THE 2013 PROPOSAL

This Annex describes the key changes the Canadian Securities Administrators (the CSA or we) have made to the 2013 Proposal in response to the comments we received. In addition, some of these changes reflect the announcement in CSA Staff Notice 11-324 *Extension of Comment Period* (CSA Staff Notice 11-324) that the CSA consider certain investment restrictions proposed in the 2013 Proposal, as specified in CSA Staff Notice 11-324, to be interrelated with the proposed amendments to National Instrument 81-104 *Commodity Pools* (NI 81-104) (the Alternative Funds Proposals). Accordingly, CSA Staff Notice 11-324 stated that these investment restrictions (the Interrelated Investment Restrictions) would be considered in conjunction with the Alternative Funds Proposals and would come into force at a later date.

The changes to the 2013 Proposal include the following:

### 1. Investment Restrictions

***Interrelated Investment Restrictions and Incentive Fees***

- As stated in Staff Notice 11-324, the CSA are deferring implementation of the Interrelated Investment Restrictions, and the proposed restrictions on a non-redeemable investment fund's payment of incentive fees, until the Alternative Funds Proposals are published for comment. As a result, the following changes have been made to the 2013 Proposal:

    - We deleted proposed paragraphs 2.3(2)(c) and (d) and proposed subsection 2.3(3) of National Instrument 81-102 *Mutual Funds* (NI 81-102), which would have restricted a non-redeemable investment fund's investments in physical commodities.

    - We deleted proposed subsection 2.3(2)(e), and did not amend sections 2.7 and 2.8 of NI 81-102, which would have restricted a non-redeemable investment fund's use of specified derivatives.

    - As a result of the foregoing, proposed paragraph 2.3(2)(f) of NI 81-102 is now paragraph 2.3(2)(c) of NI 81-102.

    - We did not proceed with the proposed amendments to paragraphs 2.6(a) to (c) of NI 81-102, which would have placed restrictions on a non-redeemable investment fund borrowing cash, purchasing securities on margin or selling securities short.

    - We did not amend section 2.6.1 of NI 81-102, which would have only permitted short selling by non-redeemable investment funds on the same terms as mutual funds are permitted to sell securities short.

    - We did not amend Part 7 of NI 81-102.

***Concentration Restriction***

- After reviewing the comments received with respect to the proposed amendment to section 2.1 of NI 81-102, the CSA are deferring the introduction of a concentration restriction for non-redeemable investment funds. The CSA may consider, in connection with the Alternative Funds Proposals, whether investment funds subject to NI 81-104 should have a different concentration restriction than other investment funds. At that time, the CSA will reconsider the concentration restriction that should apply to non-redeemable investment funds.

***Restrictions Concerning Illiquid Assets***

- After reviewing the comments received with respect to the proposed amendments to section 2.4 of NI 81-102, the CSA are deferring the implementation of these proposed amendments until such time as we have revisited the definition of "illiquid asset" in NI 81-102. At that time, the CSA will reconsider the issue of illiquid asset restrictions for non-redeemable investment funds.

- Nonetheless, the CSA remain concerned if a non-redeemable investment fund were to invest a large proportion of its net asset value in illiquid assets, as we believe that an investment fund which invests a large proportion of its portfolio in illiquid assets will generally have difficulty accurately calculating its net asset value. The CSA are also concerned that such a fund may have difficulty in managing its liquidity risk to meet redemption requests and other ongoing obligations. Accordingly, section 3.3.1 has been added to Companion Policy 81-102CP to National Instrument 81-102 *Mutual Funds*, which describes the CSA's expectations with respect to illiquid asset investments by non-redeemable investment funds.

***Investments in Other Investment Funds***

- As a result of comments received on the fund-of-fund provisions of NI 81-102, the following changes have been made to the proposed amendments to subsection 2.5(2) of NI 81-102 since the 2013 Proposal:

    - We introduced paragraph 2.5(2)(a.1) which permits a non-redeemable investment fund to purchase securities of another investment fund so long as the underlying fund is either subject to NI 81-102 or complies with the provisions of NI 81-102 applicable to a non-redeemable investment fund. As a result of this change, non-redeemable investment funds will not be restricted from purchasing securities of another non-redeemable investment fund or of a commodity pool (as defined in NI 81-104).

    - We introduced paragraph 2.5(2)(c.1) such that a non-redeemable investment fund may invest in another investment fund if the other investment fund is a reporting issuer in a jurisdiction in which the non-redeemable investment fund is a reporting issuer. In the 2013 Proposal, the proposed amendment to paragraph 2.5(2)(c)

required the underlying fund to be a reporting issuer in the same jurisdictions as the non-redeemable investment fund.

## 2. Organizational Costs

- After reviewing the comments received with respect to section 3.3 of NI 81-102, the CSA are deferring implementation of any provisions dealing with the payment of organizational costs by a non-redeemable investment fund. However, we remain concerned about the potential for regulatory arbitrage where a manager launches an investment fund as a non-redeemable investment fund and, after a short period, converts it to a mutual fund. The CSA believe that such a transaction permits a manager to circumvent the requirements of Part 3 of NI 81-102. Accordingly, we may publish, concurrently with the Alternative Funds Proposals, proposed amendments to NI 81-102 which would address this potential arbitrage.

## 3. Fundamental Changes

- Proposed subsection 5.3(2) of NI 81-102 in the 2013 Proposal contained a limited exemption from the securityholder approval requirement in subparagraph 5.1(1)(h)(i) of NI 81-102 for a non-redeemable investment fund that is structured from inception to convert to a mutual fund upon the occurrence of a specified event. Conditions for this proposed exemption included prospectus and sales communication disclosure of the conversion and securityholder notice prior to the conversion. After considering the comments received and the other changes made as a result of the comments, the CSA have deleted proposed subsection 5.3(2) of NI 81-102. The CSA consider a change to the nature of an investment fund to be a fundamental change which requires securityholder approval, and we are generally of the view that the investor benefit provided by the securityholder approval requirements in section 5.1 of NI 81-102 cannot be replaced with disclosure in the prospectus.

- Furthermore, as discussed above, unlike the 2013 Proposal, the Amendments do not contain a restriction on a non-redeemable investment fund paying its own organizational costs. Accordingly, the CSA think the requirement to obtain securityholder approval prior to a conversion from a non-redeemable investment fund to a mutual fund will mitigate the potential arbitrage of launching an investment fund in the form of a non-redeemable investment fund and then converting it to a mutual fund shortly after launch.

## 4. Sale of Securities

- The 2013 Proposal contained proposed subsections 9.3(2) and (3) of NI 81-102, which governed the issue price of securities of a non-redeemable investment fund. In response to comments received regarding the practical issues of complying with proposed subsection 9.3(3) of NI 81-102, the CSA have consolidated these two subsections into subsection 9.3(2) of NI 81-102 such that the different treatment of the issue price of securities, depending on whether the securities are issued under a

prospectus, is removed. The same anti-dilution requirements will apply to all issuances of securities by non-redeemable investment funds.

**5. Commingling of Cash**

- After reviewing comments received with respect to the application of Part 11 of NI 81-102 to non-redeemable investment funds, we have added a carve out, in subsection 11.4(1.3) of NI 81-102, from section 11.1 for CDS Clearing and Depository Services Inc.

**6. Securities Lending Disclosure Requirements**

- Based on the feedback we received in response to the potential measures to enhance the transparency of the benefits, costs and risks of securities lending, repurchase and reverse repurchase transactions by investment funds detailed in the 2013 Proposal, the CSA have introduced the Securities Lending Disclosure Amendments. These requirements comprise certain of the disclosure requirements in respect of which we sought detailed feedback, which the CSA consider to be particularly important and relevant to investors. These requirements are described under the heading "(x) Securities Lending Disclosure Requirements" in the Notice.

**7 Transition Period and Grandfathering**

- As described in the Notice, the CSA are providing transition periods for existing investment funds to comply with certain of the Amendments. In addition to the transition periods contemplated in the 2013 Proposal, the CSA are providing existing non-redeemable investment funds that are reporting issuers with 12 months to comply with the securities lending, repurchase and reverse repurchase provisions of NI 81-102.

- Moreover, under new section 18.5.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106), investments funds are not required to comply with the amendments to NI 81-106, which relate to the Securities Lending Disclosure Requirements, for financial years beginning before January 1, 2016.

- Finally, subsection 20.4(2) of NI 81-102 provides an exemption for existing non-redeemable investment funds which are reporting issuers and have adopted fundamental investment objectives to permit them to invest in mortgages, such that paragraph 2.3(2)(b) of NI 81-102 does not apply to such non-redeemable investment funds.

# ANNEX B

## SUMMARY OF PUBLIC COMMENTS AND CSA RESPONSES

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| **PART** | **TITLE** |
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| **Part II** | **Comments on proposed amendments to NI 81-102** |
| **Part III** | **Comments on disclosure of securities lending, repurchases and reverse repurchases by investment funds** |
| **Part IV** | **Other comments** |
| **Part V** | **List of commenters** |

## Part I – Background

**Summary of Comments**

On March 27, 2013, the Canadian Securities Administrators (CSA) published proposals relating to the second phase of the Modernization of Investment Fund Product Regulation Project (the Modernization Project). The proposals include amendments to National Instrument 81-102 *Mutual Funds* (NI 81-102), changes to Companion Policy 81-102CP (81-102CP), related consequential amendments, and proposals relating to National Instrument 81-104 *Commodity Pools* (NI 81-104) and securities lending, repurchases and reverse repurchases by investment funds (collectively, the Proposals). On June 25, 2013, the CSA published CSA Staff Notice 11-324 *Extension of Comment Period* (CSA Staff Notice 11-324) to extend the closing of the comment period on the Proposals from June 25, 2013 to August 23, 2013.

The Proposals aim to (i) introduce core investment restrictions and operational requirements for publicly offered non-redeemable investment funds, other than scholarship plans, (ii) enhance the disclosure requirements relating to securities lending, repurchases and reverse repurchases by investment funds (the Securities Lending Disclosure Proposals), and (iii) create a more comprehensive alternative fund framework to be effected through amendments to NI 81-104 (the Alternative Funds Proposals). As stated in CSA Staff Notice 11-324, we are finalizing certain aspects of the Proposals in advance of others. In particular, we are first focusing on

finalizing the proposed amendments that introduce core investment restrictions and operational requirements for non-redeemable investment funds and certain of the Securities Lending Disclosure Proposals. The Alternative Funds Proposals will be considered in conjunction with certain of the investment restrictions included in the Proposals, which include provisions regarding investments in physical commodities, borrowing cash, short selling and use of derivatives (the Interrelated Investment Restrictions), and will come into force at a later date.

We received submissions from 49 commenters, which are listed in Part V. We have considered the comments received and have made some changes in response to the comments. We wish to thank all those who took the time to comment.

While we appreciate all comments received in relation to the Proposals, we have not provided a summary of the comments in respect of the Alternative Funds Proposals and the Interrelated Investment Restrictions, as they are not being finalized at this time. As we move forward with the implementation of the Alternative Funds Proposals and the Interrelated Investment Restrictions, the CSA will continue to consider all comments received.

## Part II - Comments on proposed amendments to NI 81-102

| Issue | Comments | Responses |
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| **General comments** | Most commenters generally supported the proposed amendments to NI 81-102 (the Proposed Amendments), other than those relating to Part 2 (the Investment Restriction Proposals) and Part 3 (the Organizational Cost Proposals) of NI 81-102.<br><br>Commenters had differing views with respect to the various provisions of the Investment Restriction Proposals, which are summarized below.<br><br>A majority of commenters strongly disagreed with the Organizational Cost Proposals. The extensive feedback we received with respect to the Organizational Cost | We thank all commenters for their feedback.<br><br>Other than the Investment Restriction Proposals and the Organizational Cost Proposals, the CSA are finalizing the Proposed Amendments subject to certain minor changes discussed in Annex A (the 81-102 Amendments). We are also introducing certain of the Securities Lending Disclosure Proposals as discussed in the CSA Notice of Amendments (the Notice) and in Part III of this Annex B (the Securities Lending Disclosure Requirements, and together with the 81-102 Amendments, the Amendments). |

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| | Proposals is summarized below. | After reviewing the comments received, the CSA are deferring the implementation of the proposed amendments to sections 2.1 (the issuer concentration restriction) and 2.4 (the illiquid asset restrictions) of NI 81-102, among others, until such time as the Alternative Funds Proposals and the Interrelated Investment Restrictions are finalized.<br><br>Moreover, the CSA will continue to consider how best to proceed on the Organizational Cost Proposals.<br><br>Accordingly, the issuer concentration restriction and the illiquid asset restrictions, as well as proposed amendments regarding organizational costs, may be republished for comment concurrently with the publication for comment of the Alternative Funds Proposals and the Interrelated Investment Restrictions. |
| **Concentration restriction (s. 2.1)** | Most commenters disagreed with the issuer concentration restriction, which would require non-redeemable investment funds to limit their investment in an issuer to an amount equal to 10% of net asset value (NAV) at the time of purchase.<br><br>Several commenters submitted that, unlike conventional mutual funds, non-redeemable investment funds are not meant to be used as an investor's sole or primary investment vehicle, but are intended to achieve a particular investment strategy within a broader overall portfolio.<br><br>One of these commenters explained that the diversification benefits of a concentration restriction, | After considering the comments received, the CSA have decided not to finalize the issuer concentration restriction at this time.<br><br>While the CSA recognize that non-redeemable investment funds have different diversification and liquidity requirements than mutual funds, the CSA continue to think that these differences do not support the absence of any concentration limit for non-redeemable investment funds. Given that the majority of non-redeemable investment funds adopt an issuer concentration limit, the CSA continue to be of the view that retail investors generally expect that all publicly offered investment funds provide some level of diversification. |

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| | which allow investors to benefit from investing in a fund as compared to investing on an individual account basis, do not apply to investors of non-redeemable investment funds. These investors generally invest in non-redeemable investment funds through an individual account at a dealer member of the Investment Industry Regulatory Organization of Canada (IIROC), which account would include other investments such as stocks and bonds. Therefore, diversification for non-redeemable investment fund investors is achieved at the portfolio level rather than at the product level, as is done by many mutual fund investors.<br><br>Several commenters submitted that, in the process of structuring a new non-redeemable investment fund, the appropriate level of diversification is determined by the theme and objectives of the product only, and not by investor expectation or industry practice. Many commenters underscored that non-redeemable investment funds are niche products designed around particular investment themes, objectives and techniques, and to propose that all non-redeemable investment funds achieve the same diversification objective has the potential to stifle innovation and investor choice. According to these commenters, a concentration restriction will unnecessarily limit the range of investment strategies available to portfolio managers.<br><br>Many commenters also submitted that the concentration limit exists for mutual funds as a rudimentary protection to ensure that the fund | The CSA also recognize that non-redeemable investment funds may use a broad range of investment strategies and investment restrictions to achieve the particular investment objectives of each fund. The CSA note that some of these investment objectives may require higher concentration limits than others. While the CSA consider it important for non-redeemable investment funds to retain sufficient flexibility to pursue diverse investment strategies, the CSA also think there should be appropriate differentiation between the concentrated exposure of non-redeemable investment funds using conventional strategies and those using more alternative strategies.<br><br>Accordingly, the CSA think that any concentration limit applicable to non-redeemable investment funds should provide for a sufficient level of portfolio diversification while providing managers with the flexibility to pursue certain strategies.<br><br>Also, while the CSA agree that due diligence and scrutiny of potential offerings of non-redeemable investment funds by multiple parties is beneficial, in our view such due diligence does not completely obviate the need for guidelines and restrictions around the activities of non-redeemable investment funds, particularly in respect of a non-redeemable investment fund's ongoing activities after the initial public offering.<br><br>In the notice accompanying the Proposals published on March 27, 2013 (the Request for Comments), the CSA |

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| | preserves a level of liquidity to meet redemptions. Unlike mutual funds, non-redeemable investment funds are not constrained by the need to maintain certain levels of liquidity, as they generally only offer annual redemptions and have redemption notice periods of up to 60 days. Further, since most non-redeemable investment funds are listed on an exchange, investors have a source of liquidity that does not impact the fund's investment portfolio.<br><br>While several commenters acknowledged that the majority of currently existing non-redeemable investment funds adopt a 10% concentration restriction, they also disagreed that it reflects an industry best practice. We were told that certain non-redeemable investment funds impose a 10% concentration restriction to satisfy one of the conditions necessary to qualify as a "mutual fund trust" for purposes of the *Income Tax Act*, while others may impose a concentration restriction to reflect a diversification objective, such as for risk management or for investment reasons.<br><br>Other commenters emphasized that new regulation should not be introduced simply because most non-redeemable investment funds at this point in time have adopted similar parameters. We were told that such an approach to regulation would be careless because it does not allow for changing needs and demands of investors, or changing economic and financial conditions.<br><br>Several commenters noted that many existing non- | indicated that we will consider whether there should be different concentration limits for non-redeemable funds in NI 81-102 and non-redeemable funds subject to the alternative funds framework in NI 81-104. Accordingly, the CSA will continue to consider the appropriate concentration limit for non-redeemable investment funds in conjunction with considering the Alternative Funds Proposals.<br><br>When considering the appropriate concentration limit for non-redeemable investment funds, the CSA will consider the different investment strategies currently used by non-redeemable investment funds, including, among other things, whether non-redeemable investment funds whose investment objectives or strategies require concentrated portfolios should be regulated under the alternative fund framework or whether there should be exemptions similar to the fixed portfolio carve-out for exchange-traded funds. |

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| | redeemable investment funds have investment theses that permit the fund to hold securities of a small number of issuers. For example, many funds provide exposure to certain industries and sectors, such as the Canadian banking, insurance or wireless industries, that are highly concentrated and provide fewer than ten investment positions. These funds, which have been long accepted in the marketplace, would not comply with the 10% concentration restriction and may not fall under the proposed carve-out for fixed portfolio funds.<br><br>In these commenters' view, investors should not be restricted from buying a non-redeemable investment fund that provides exposure to such a limited number of issuers, given that these investors would not be restricted from buying the underlying companies. We were told that buying the securities directly would not permit investors to benefit from the overlay strategies used by a non-redeemable investment fund to reduce risk or increase cash income.<br><br>One commenter also noted that the level of risk and innovation provided by industry-specific funds would make their designation as alternative funds inappropriate.<br><br>We were told that, other than industry-specific funds, existing non-redeemable investment funds structured to provide concentrated exposure above the proposed 10% concentration restriction include funds with subsidiaries, split share corporations that may have 100% exposure to one underlying issuer, fund-of-fund structures where a top fund may have exposure to a | |

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| | single counterparty under a derivative, and funds that invest in flow-through shares of resource issuers (flow-through funds).<br><br>In respect of flow-through funds, two commenters noted that a concentration restriction would not be relevant, as the securities of such funds are not redeemable. Accordingly, there is no direct correlation between liquidity risk to investors and the operational liquidity required for flow-through funds.<br><br>One commenter added that the imposition of a concentration restriction would lead to unintentional consequences for existing non-redeemable investment funds that obtain exposure to underlying funds through forward agreements. These non-redeemable investment funds would find themselves offside the concentration restriction and would be required to terminate their forward arrangements prematurely, thereby triggering unnecessary tax consequences for investors.<br><br>One commenter also noted that there are some non-redeemable investment funds that use indices as benchmarks and that it is not uncommon for indices to have components with a greater than 10% weighting.<br><br>Several commenters suggested that a concentration restriction is unnecessary in light of the extensive disclosure provided about a non-redeemable investment fund's investment strategies and restrictions in the long form prospectus. With this disclosure, investors and advisors can make an informed judgment on whether the fund's strategy is appropriate. | |

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| | A few commenters also submitted that non-redeemable investment funds coming to market under a long form prospectus are thoroughly scrutinized and subject to vetting and due diligence by many registered investment dealers who have liability for the prospectus disclosure. This vetting process involves the issuer, the issuer's counsel, the lead investment dealer acting as agent and its counsel, as well as the entire syndicate of investment dealers, and results in a dynamic set of restrictions designed specifically for the particular investment objective, strategy and asset class of the fund. In addition, fund securities are only distributed by registered investment dealers who are subject to Know Your Client, suitability and other obligations. These commenters believed that this multi-layered approval process allows the market to impose its own discipline such that a concentration restriction is not necessary.<br><br>One commenter suggested that regulations should be focused on the manager to ensure that the manager has the expertise to manage the strategies and objectives of the fund, rather than restricting investment strategies.<br><br>Of those commenters who agreed with the introduction of a concentration restriction for non-redeemable investment funds, a few recommended concentration limits of 15% to 20% of NAV. Some of these commenters felt that this threshold would provide for a sufficient level of portfolio diversification while providing managers with the flexibility to pursue certain strategies. Other commenters submitted that | |

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| | these would be acceptable thresholds only if the fixed portfolio fund exemption was broadened to provide for rules-based or formulaic portfolios (that would permit rebalancing or portfolio substitutions) and subject to a look-through for fund-of-fund investments.<br><br>Another commenter suggested that a concentration limit of 25% to 30% of NAV would achieve the appropriate balance for providing non-redeemable investment funds with investment flexibility while at the same time providing for reasonable diversification.<br><br>One commenter submitted that an appropriate concentration limit for flow-through funds would be 20% of NAV. This commenter felt that such a restriction would continue to permit managers to purchase a higher concentration of higher quality investments.<br><br>One commenter thought that there should be no concentration limit if non-redeemable investment funds are no longer permitted to offer redemptions of their securities with reference to NAV.<br><br>When considering an appropriate limit for non-redeemable investment funds, many commenters were of the view that this investment restriction is interrelated with the Alternative Funds Proposals and should be considered concurrently with amendments to NI 81-104.<br><br>One commenter suggested, for example, that it would not be opposed to a 10% concentration limit for non- | |

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| | redeemable investment funds if there were no limit for alternative funds. | |
| **Control restriction (s. 2.2)** | One commenter questioned the interpretation of proposed section 2.2 of NI 81-102 in section 3.2.1 of 81-102CP, which would, in this commenter's view, bring into question the activities of fund managers who take a more activist approach in managing mutual funds. This commenter thought that the CSA should engage in more consultation before finalizing this policy pronouncement. | No change. Section 3.2.1 of 81-102CP is consistent with the CSA's view that investment funds should not be operating businesses or take active control over the management of issuers in which they invest. However, we have made minor amendments to the language in section 3.2.1 of 81-102CP to clarify that the discussion of "control" in section 3.2.1 is only with respect to section 2.2 of NI 81-102 and may not be applicable to "control" as used in other provisions of securities legislation. |
| **Investments in non-guaranteed mortgages (s. 2.3(2)(b))** | Many commenters questioned the CSA's proposal to prohibit non-redeemable investment funds from investing in mortgages others than guaranteed mortgages (the non-guaranteed mortgage restriction).<br><br>Some commenters noted that there has been recent discussion by the CSA regarding whether investment funds that invest all or substantially all of their assets in mortgages (MIEs) are investment funds or whether they should be regulated under the securities law regime for issuers that are not investment funds. A few commenters urged the CSA to clarify their current position about whether an MIE satisfies the definition of an investment fund.<br><br>Along this line, one commenter conveyed that MIEs should not be able to choose whether to be regulated as investment funds or corporate issuers, and further suggested that uniform rules should apply across | No change. The CSA are of the view that, generally, non-guaranteed mortgages are not appropriate investments for publicly offered non-redeemable investment funds. Given that investing in non-guaranteed mortgages can be akin to engaging in a lending business, we think such an investment is contrary to the nature of an investment fund.<br><br>Moreover, investments in non-guaranteed mortgages may, in the event of borrower default, require the MIE to exercise and enforce its rights as a mortgagee, which includes managing the real property underlying the mortgage until such time as the MIE is able to dispose of the property. The CSA are of the view that such activities require certain business expertise and are generally outside the scope of portfolio management typically engaged in by investment funds.<br><br>Further, given the CSA's view that the mortgage |

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| | Canada.<br><br>If the CSA are of the view that it is more appropriate to regulate MIEs as non-investment fund issuers, a few commenters questioned how MIEs transitioning from the regulatory regime for investment funds to the regulatory regime for issuers that are not investment funds would alleviate any concerns regarding investor protection.<br><br>One such commenter noted that the benefits of being invested in an investment fund, including redemptions, the publication of NAV, the imposition of investment restrictions and the presence of a registered investment fund manager, would be lost if MIEs are no longer subject to the regulatory regime for investment funds.<br><br>One commenter suggested that CSA staff engage with investors so that they may understand why MIEs may be transitioning from investment funds to non-investment funds, what impact a change in regulatory regime will have on the value of their investments and whether there will be grandfathering provisions. | lending activities engaged in by many MIEs are akin to a lending business, we think the prospectus disclosure and continuous disclosure requirements applicable to investment funds are not designed to provide information regarding operating businesses. Accordingly, better disclosure regarding an operating business can be provided to investors by complying with the disclosure requirements applicable to non-investment fund issuers.<br><br>The CSA also note that the non-guaranteed mortgage restriction will apply equally in every jurisdiction of Canada.<br><br>Despite the above, in order to provide time for MIEs subject to NI 81-102 to consider divesting their non-guaranteed mortgages or transitioning to the regulatory regime applicable to reporting issuers that are not investment funds, the CSA are grandfathering existing non-redeemable investment funds that have adopted fundamental investment objectives to permit them to invest in mortgages, such that the non-guaranteed mortgage restriction will not apply to them. See new subsection 20.4(2) of NI 81-102 and "Transitioning and grandfathering of existing funds" below.<br><br>The CSA are of the view that it is up to each MIE to determine how to respond to paragraph 2.3(2)(b) of NI 81-102. Some MIEs may decide to divest their non-guaranteed mortgages, while others may decide to transition to the regulatory regime applicable to reporting issuers that are not investment funds. |

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| | On the other hand, if MIEs may be structured as non-redeemable investment funds, certain commenters felt that the non-guaranteed mortgage restriction inappropriately restricts non-redeemable investment fund investment in non-guaranteed mortgages. | As discussed above, investments in non-guaranteed mortgages introduce certain potential issues not found with guaranteed mortgages such as the possible need to seize, manage and dispose of the real property underlying the mortgage in the event of borrower default. |
| | A few commenters suggested that one reason for the proposed non-guaranteed mortgage restriction may be the illiquid nature of mortgage investments. These commenters submitted that illiquidity is not a sufficient reason to preclude non-redeemable investment funds from investing in non-guaranteed mortgages, as non-redeemable investment funds are able to match their redemption rights to the liquidity of their investment portfolio through other means, such as limiting annual redemptions of their securities and providing for a lengthy notice and payment time period for redemptions. | While the illiquidity of, and difficulty of valuing, mortgages are concerns for the CSA, the additional concern addressed by the non-guaranteed mortgage restriction is that investments in non-guaranteed mortgages are generally inappropriate for publicly offered non-redeemable investment funds. See the reasons provided above. |
| | We were also told that a portfolio of mortgages provides monthly income to a non-redeemable investment fund that covers ongoing liquidity needs, such as management fees and operational expenses, and thus, liquidity for a MIE is not wholly dependent on the ability to sell the fund's assets. | See response above. |
| | Some commenters suggested that another reason for the proposed non-guaranteed mortgage restriction may be concerns regarding the ability to accurately value mortgage investments. These commenters noted that valuation is not an issue, given that accounting guidelines in Canada specifically address the valuation | See response above. |

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| | of mortgages. | |
| | One commenter suggested that the reasoning behind the non-guaranteed mortgage restriction may stem from sub-prime non-guaranteed mortgages becoming a contributing factor to the 2008 financial crisis. This commenter told us that the Canadian mortgage market differs fundamentally from the market in the United States and did not experience the same outcomes in 2008. | The CSA are not of the view that entities should not invest in non-guaranteed mortgages nor do we take issue with MIEs in general. The non-guaranteed mortgage restriction is not intended to impede investments in non-guaranteed mortgages altogether, and only restricts non-redeemable investment funds that are reporting issuers from purchasing non-guaranteed mortgages. Accordingly, the non-guaranteed mortgage restriction is unrelated to the 2008 financial crisis. |
| | A few commenters thought that it was not clear from the Request for Comments or CSA Staff Notice 31-323 *Guidance Relating to the Registration Obligations of Mortgage Investment Entities* why the CSA are making a distinction between guaranteed and non-guaranteed mortgages. | See responses above regarding the CSA's concerns associated with non-guaranteed mortgage investments. The distinction between guaranteed and non-guaranteed mortgages has always been recognized by NI 81-102 in respect of mutual funds by virtue of what is now paragraph 2.3(1)(b) of NI 81-102. |
| | A few commenters were of the view that investments in mortgages should not be restricted to guaranteed mortgages, in the same way that bond investors should not be restricted to only holding guaranteed government bonds. One of these commenters told us that the non-guaranteed mortgage restriction seems to put mortgage investments in an unfair competitive position versus other investment alternatives such as corporate bonds and equities with which an investor is at risk for loss of capital. | As stated above, the CSA do not have a view with respect to whether entities should invest in non-guaranteed mortgages nor do we take issue with MIEs in general. The non-guaranteed mortgage restriction only applies to publicly offered non-redeemable investment funds. Issuers that are not investment funds may continue to invest in non-guaranteed mortgages. |
| | One commenter questioned why non-redeemable investment funds would be prohibited from holding | Mutual funds are generally not permitted to invest in non-guaranteed mortgages by virtue of paragraph |

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| | non-guaranteed mortgages while mutual funds may do so subject only to compliance with the provisions of National Policy Statement 29 *Mutual Funds Investing in Mortgages* (NP 29). In this commenter's view, if it is acceptable to sell MIEs as low-risk investments through the mutual fund dealer channel, they should be acceptable in the IIROC channel as well. This commenter questioned whether the CSA is also planning to abolish NP 29. | 2.3(1)(b) of NI 81-102. The exception to this restriction is currently provided by section 20.4 of NI 81-102 for mutual funds which existed prior to the coming into force of NI 81-102, and which comply with NP 29. Please note that under the Amendments, section 20.4 is renumbered as subsection 20.4(1). |
| | One commenter suggested amending the non-guaranteed mortgage restriction to mirror the restriction in NP 29, whereby only mortgages that exceed a specified loan to value ratio require insurance, and only applying this rule to those non-redeemable investment funds whose primary objective is not mortgage investing. | No change made. The CSA are not imposing an insurance requirement on mortgages. Rather, the non-guaranteed mortgage restriction simply restricts the types of mortgages that publicly offered non-redeemable investment funds may purchase. |
| | Another commenter suggested that the loan to value ratio is the correct determinant of whether mortgage insurance should be required, rather than the particular legal or listing structure of the lender. | No change made. See response immediately above. |
| | Certain commenters told us that mortgages are not an asset class that investors can participate in individually and therefore, the non-guaranteed mortgage restriction would preclude Canadian investors from the opportunity to invest in this asset class, which has generated attractive returns in the past on a basis uncorrelated with the capital markets. Accordingly, investors should be allowed to make an informed investment decision based on prospectus disclosure and continuous disclosure. | Investors may continue to invest in non-guaranteed mortgages through MIEs that are not investment funds. The CSA note that there are currently a number of such MIEs which are reporting issuers, and a reporting issuer that wishes to invest its assets in non-guaranteed mortgages may do so as an issuer that is not an investment fund. |

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| | One commenter told us that mortgages can form part of a well-diversified portfolio and a non-redeemable investment fund which invests in mortgages may be appropriate for some investors. However, this commenter recommended that rules be imposed to require the non-redeemable investment fund's manager to be at arm's-length from the mortgagor and any of the parties to the real estate transaction. | See the responses above. Despite the non-guaranteed mortgage restriction, the CSA are not expressing a view with respect to the role that mortgages may play in a portfolio or their appropriateness for investors. |
| | Another commenter noted that MIEs provide an alternative source of financing in mortgages. In this commenter's view, restricting MIEs to only holding guaranteed mortgages will limit their ability to target markets, will restrict competition and could result in some types of mortgage loans disappearing from the marketplace. | See the responses above. |
| | One commenter also asked whether the MIE entity analysis would apply to issuers who hold collateralized debt obligations (CDOs) as they have many similarities with mortgage investment entities. This commenter indicated that it would be helpful to understand what the CSA's regulatory response will be, as many CDO offerings are being done on a private placement basis and it is inevitable that this structure will enter the public fund space. | A discussion of issuers who hold CDOs is beyond the scope of the Modernization Project. |
| | A number of commenters noted that, currently, no non-redeemable investment funds have investment objectives to invest in guaranteed mortgages. Therefore, according to these commenters, the non-guaranteed mortgage restriction would effectively | See responses above. For the reasons provided above, the CSA are of the view that MIEs generally engage in activities inconsistent with the nature of an investment fund and should be regulated under the regulatory regime for non-investment fund issuers. |

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| | eliminate MIEs from the investment fund category. | |
| | One commenter told us that some MIEs will have to change their investment objectives to comply with the non-guaranteed mortgage restriction, which may make them uneconomic and will drastically change their return profile. | The CSA have introduced new subsection 20.4(2) of NI 81-102, such that the non-guaranteed mortgage restriction will not apply to certain existing MIEs. Therefore, there is no requirement for such MIEs to amend their investment restrictions at this time. See "Transitioning and grandfathering of existing funds" below. |
| | A few commenters were of the view that the effect of the non-guaranteed mortgage restriction will be that MIEs will not meet the listing requirements of the Toronto Stock Exchange (the TSX). As one commenter noted, one of the reasons for an issuer to elect to be regulated as an investment fund is that the listing requirements of the TSX are able to be met. | In our view, being able to meet the listing requirements of an exchange does not provide a sufficient policy basis for permitting non-redeemable investment funds to engage in activity which may be inconsistent with their nature. |
| | According to these commenters, a new MIE would first need to raise funds in the exempt market in order to have the appropriate financial performance to meet the TSX listing requirements as a corporate issuer. Some of these commenters felt that the CSA should engage in a dialogue with the TSX prior to finalizing the proposed restrictions since they could severely hamper new entrants and investor choice. One commenter also added that the CSA cannot properly conduct a cost-benefit analysis of the non-guaranteed mortgage restriction without understanding whether the TSX intends to delist existing MIEs. | See the response immediately above. |
| | One commenter requested further clarity on the definition of a non-guaranteed mortgage. According to | "Guaranteed mortgage" is a defined term in NI 81-102. For the purposes of the Notice and this Annex B, a |

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| | this commenter, certain mortgages are not guaranteed but have sufficient collateral to support the mortgage value and present less risk.<br><br>One commenter noted that the definition of "mortgage" is very broad and covers any debt obligation that is charged on real property (such as corporate issue bonds and other loans) and may result in a restriction that is broader than intended.<br><br>Many commenters were in favour of grandfathering existing non-redeemable investment funds that invest in non-guaranteed mortgages. These comments are summarized in Part IV of this Annex B, along with other comments regarding grandfathering and transition periods. | "non-guaranteed mortgage" refers to a mortgage that is not a guaranteed mortgage.<br><br>We note that, to date, mutual funds have not had difficulty with the definition of "mortgage" in NI 81-102 in connection with complying with their investment restrictions.<br><br>The CSA have introduced new subsection 20.4(2) of NI 81-102 such that the non-guaranteed mortgage restriction will not apply to certain existing non-redeemable investment funds. See "Transitioning and grandfathering of existing funds". |
| **Investments in illiquid assets (s. 2.4)** | Most commenters were of the view that the illiquid asset restrictions should not apply to non-redeemable investment funds.<br><br>Many commenters told us that the definition of "illiquid asset" in NI 81-102 is problematic and that the illiquid asset restrictions cannot be fully considered or commented on until the definition is modernized.<br><br>Several commenters expressed that the "illiquid asset" definition needs to be updated to reflect the current market environment, as the definition unintentionally captures highly liquid securities. These commenters thought that the current definition does not address the purpose of the illiquid asset restriction because some securities that are considered liquid, such as certain | After considering the comments received, the CSA have decided not to finalize, at this time, the illiquid asset restrictions. In conjunction with considering the Alternative Funds Proposals, the CSA will continue to consider what requirements concerning illiquid assets, including a maximum limit and related divestiture requirement, are appropriate for non-redeemable investment funds.<br><br>In conjunction with considering the appropriate illiquid asset limits for non-redeemable investment funds, the CSA will also revisit the definition of "illiquid asset" in NI 81-102 and consider whether it continues to keep pace with industry investment standards.<br><br>While the CSA recognize that non-redeemable |

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| | equity securities and fixed income securities, are very thinly traded, whereas certain non-public securities that actively trade in the grey market or over-the-counter (OTC), and for which independent market pricing is relatively easy to obtain, are considered illiquid. These include high yield bonds, senior loans, mutual funds redeemable daily at NAV, and OTC derivatives.<br><br>A few other commenters expressed that certain elements of the "illiquid asset" definition are difficult to interpret and apply. For example, it is not clear whether "public quotations" is intended to capture securities or instruments that are not listed on conventional exchanges. Further, it is unclear whether the definition is intended to exclude mortgages or securities whose resale is restricted by law.<br><br>Many commenters submitted that the purpose of the illiquid asset restrictions in NI 81-102 is to ensure that there is not a mismatch between requests for redemptions of a mutual fund's securities by securityholders and the ability of the fund to meet those redemptions. According to these commenters, non-redeemable investment funds do not need to maintain the same levels of liquidity as mutual funds because they generally only offer redemptions once per year, they have redemption notice periods of up to 60 days, and liquidity is primarily obtained through trading on an exchange. Further, there is a lengthy timeline for the payment of redemption proceeds. Therefore, these commenters felt that cash flow needs are different for non-redeemable investment funds than for mutual funds. | investment funds have different liquidity requirements than mutual funds, the CSA continue to think that these differences do not support the absence of any illiquid asset limit for non-redeemable investment funds, especially given that the majority of non-redeemable investment funds offer an annual redemption at NAV, which requires a non-redeemable investment fund to maintain a certain level of liquidity in its portfolio to fund redemptions (and to pay ongoing expenses). We note that the majority of non-redeemable investment funds already adopt an internal limit for illiquid assets equal to 10% of NAV.<br><br>Moreover, illiquid assets are generally more difficult to value and, therefore, may raise questions regarding fees calculated in relation to the NAV of a non-redeemable investment fund which invests a large portion of its assets in illiquid assets. These valuation problems are, in the CSA's view, not sufficiently mitigated by disclosure.<br><br>The CSA recognize that the ability to invest in illiquid assets has historically been a distinguishing feature of non-redeemable investment funds. While the CSA consider it beneficial for non-redeemable investment funds to retain some flexibility to invest in illiquid assets, we think a maximum limit would mitigate the liquidity and valuation concerns associated with investing substantial portions of an investment fund's assets in illiquid assets. The CSA consider that disclosure of illiquid asset investments and their associated risks in a non-redeemable investment fund's prospectus may not sufficiently address these concerns. |

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| | Several commenters noted that managers already endeavour to structure funds that are able to meet annual redemptions. For example, many non-redeemable investment funds hold minimal amounts of illiquid assets because investors generally desire annual redemptions. At the same time, where an investment mandate contemplates significant amounts of illiquid assets, redemption rights are either capped or not offered at all. It was submitted that this demonstrates market discipline is working effectively.<br><br>One commenter emphasized that the manager is in the best position to evaluate a non-redeemable investment fund's liquidity needs, which will be determined by factors such as the frequency of redemptions, other cash flow needs, the fund's investment mandate, overall market conditions and outlook for different asset classes.<br><br>Many commenters strongly believed that non-redeemable investment funds should be afforded more flexibility to invest in illiquid assets. It was submitted that, historically, the unique investment objectives and strategies offered by the ability to invest in illiquid assets was one of the primary benefits of the non-redeemable investment fund structure over the mutual fund structure.<br><br>One commenter submitted that illiquid investments, such as securities issued by private companies, OTC and thinly traded securities and OTC options, can be undervalued by the market as a result of their illiquid | While the CSA note that managers do generally set illiquid asset levels with a view to a given non-redeemable investment fund's structure, the CSA think that a baseline level applicable to all non-redeemable investment funds is important for the reasons stated above.<br><br>To address the CSA's concerns in the meantime, the CSA have introduced section 3.3.1 of 81-102CP, which sets out some of the CSA's expectations concerning a non-redeemable investment fund's practices with respect to investing in illiquid assets.<br><br>The CSA agree that an appropriate illiquid asset limit would provide non-redeemable investment funds with sufficient flexibility to pursue a range of investment strategies, while not posing significant challenges to valuation or creating substantial risk of liquidity problems. The CSA will therefore consider, when determining the appropriate illiquid asset restrictions for non-redeemable investment funds, the different investment strategies and asset classes used by non-redeemable investment funds that may require higher levels of illiquid assets.<br><br>Furthermore, the CSA will consider, when proposing the illiquid asset restrictions for non-redeemable investment funds, whether different illiquid asset limits should apply to non-redeemable investment funds whose securities do not permit securityholders to request that the fund redeem their securities (for example, non-redeemable investment funds which |

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| | nature, which provides an opportunity for a non-redeemable investment fund to earn a higher return, particularly over the longer term.<br><br>Some commenters were concerned that the illiquid asset restrictions would limit or prohibit investments in flow-through securities of junior exploration companies, public-private infrastructure partnerships, venture capital opportunities, mortgages and other investments that could benefit investors as well as the economy.<br><br>A few commenters noted in particular that investments in securities that are subject to hold periods should not be restricted if the hold period is to expire before the next redemption date. For example, one commenter submitted that flow-through securities purchased via private placements and other privately sourced opportunities often have four-month hold periods and would be considered illiquid assets. We were told that quality issuers are increasingly choosing to remain private and, further, that good quality flow-through investments are difficult to find. Accordingly, restricting investments that have hold periods may severely impact non-redeemable investment funds that actively participate in private placements of publicly traded issuers, such as flow-through funds.<br><br>Several commenters emphasized that imposing a limit for illiquid asset investments will stifle product innovation and the availability of diverse investment products, and reduce investor choice. While a few commenters acknowledged that many existing non- | invest in flow-through shares of resources issuers).<br><br>In formulating the Alternative Funds Proposals, the CSA will also consider whether different illiquid asset limits should apply to investment funds that are subject to NI 81-104.<br><br>Finally, while several commenters suggested that mortgages be carved out of any illiquid asset restriction, the CSA note that under subsection 2.3(2)(b) of NI 81-102, non-redeemable investment funds will no longer be permitted to purchase non-guaranteed mortgages. The CSA do not think there are any policy reasons to treat guaranteed mortgages differently than other assets in respect of liquidity requirements of a non-redeemable investment fund. |

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| | redeemable investment funds adopt an illiquid asset restriction, and any proposed restriction may not have a significant impact on these existing funds, a limit may nonetheless inhibit potentially valuable product development and innovation going forward.<br><br>Many commenters felt that appropriate disclosure would eliminate the need for an illiquidity restriction. These commenters recommended that the CSA ensure a non-redeemable investment fund's prospectus provides comprehensive disclosure about the fund's ability to invest in illiquid assets with reference to the fund's investment objectives and strategies, as well as the associated risks of investing in illiquid assets.<br><br>One commenter noted that investors in non-redeemable investment funds are already provided with sufficient disclosure about the non-redeemable investment fund's investments in illiquid assets, and the management of those risks, in the notes to the fund's financial statements, which enables an investor to evaluate a non-redeemable investment fund's liquidity risk.<br><br>When considering an appropriate illiquid asset limit for non-redeemable investment funds, many commenters were of the view that any such investment restriction is interrelated with the Alternative Funds Proposals and should be considered concurrently with amendments to NI 81-104.<br><br>Commenters had differing views about whether to apply different illiquidity restrictions for non-redeemable investment funds that offer annual | |

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| | redemptions of their securities and non-redeemable investment funds that do not offer any redemptions.<br><br>Some commenters were of the view that the two types of non-redeemable investment funds have different liquidity needs and, therefore, should be subject to different limits. These commenters suggested that non-redeemable investment funds that do not offer any redemptions of their securities should be permitted to invest a higher proportion of their NAV in illiquid assets. In particular, one commenter recommended that flow-through funds not be caught by the illiquid asset restrictions since their securities are not redeemable.<br><br>Another commenter submitted that there is little practical difference between non-redeemable investment funds that offer annual redemptions of their securities and open-end mutual funds, in that both need to generate liquidity to satisfy redemption requests. We were urged to consider whether a difference in the frequency of redemption requests is a sufficient basis on which to apply different illiquid asset restrictions.<br><br>One commenter suggested that restricting investment in illiquid assets to an amount equal to 20% of a non-redeemable investment fund's NAV would be appropriate, as it would provide non-redeemable investment funds with sufficient investment flexibility to engage in their investment strategies, while not posing significant challenges to valuation or creating substantial risk of liquidity problems. Two commenters suggested that a limit of 25% to 30% would provide this appropriate balance while another commenter | |

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| | believed that 50% would be a reasonable limit.<br><br>One commenter expressed that it would support an illiquidity limit of 25% of NAV only if the definition of "illiquid assets" were updated. This commenter also suggested that non-redeemable investment funds have the ability to seek exemptive relief in cases where an investment strategy may call for higher levels of investment in illiquid assets.<br><br>A few commenters were of the view that non-redeemable investment funds should have a longer timeline for divesting illiquid assets, which are in excess of the permitted limit, than the 90 days provided to mutual funds in NI 81-102, especially in light of the fact that such funds only offer annual redemptions of their securities and have lengthy notice periods for redemptions.<br><br>For example, two commenters submitted that non-redeemable investment funds should not be required to adjust their portfolios where increased market valuations are the cause of exceeding the illiquid asset restrictions. It was submitted that if a non-redeemable investment fund's position in a private company grew to such a size that it exceeded the illiquid asset restrictions, the fund would be required to sell down the position even though the portfolio manager considered the investment to be successful and would have recommended that such investment be permitted to realize its full value or that the fund invest in other private companies as part of its investment strategy. We were told that applying a divestiture requirement | |

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| | under these circumstances would adversely affect securityholders.<br><br>Another commenter submitted that, if the illiquid asset limit was increased to a higher level, such as 25% to 30% of NAV, then the 90-day divestiture requirement applicable to mutual funds should also apply to non-redeemable investment funds.<br><br>One commenter expressed concern that 90 days is an insufficient period to sell illiquid assets in a responsible manner that ensures the preservation of NAV, given that divesting a portfolio of assets such as mortgages and private real estate interests at fair market value is a time consuming process and is affected by a variety of asset-specific and macroeconomic factors.<br><br>Several commenters believed that a non-redeemable investment fund holding illiquid assets would not lead to difficulty in valuing the NAV of the fund. These commenters felt that properly disclosed valuation principles together with accounting and auditing valuation methodologies for illiquid assets are sufficient to address the CSA's concerns.<br><br>A few commenters submitted that non-redeemable investment funds have established procedures for valuing illiquid assets, which are typically carried out by third-party valuation agents. Further, the valuation must be conducted in a manner that is consistent with accounting standards and the detailed valuation policies and procedures disclosed to investors in the prospectus. | |

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| | One commenter emphasized that the accounting and auditing profession has made great strides in determining appropriate valuation methodologies for illiquid assets, which are relied upon by bank and securities industry regulators around the world.<br><br>Another commenter emphasized that non-redeemable investment fund managers are subject to a variety of rules in respect of calculating NAV, including National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107) and, in Ontario, a statutory standard of care and fiduciary duty.<br><br>Two commenters also referred to discussions at the international level regarding liquidity risk management. These commenters agreed with the view that valuation concerns are more appropriately dealt with through effective and robust valuation governance arrangements (including a fund having formal valuation policies, procedures and controls and that valuation be outsourced to third parties), rather than limitations on investing in illiquid assets. | |
| **Investments in other investment funds (s. 2.5)** | Although several commenters expected the number and frequency of fund-of-fund structures to diminish significantly as a result of recent changes to tax legislation regarding character conversion transactions, they believed that non-redeemable investment funds should continue to have the ability to invest in or obtain exposure to other investment funds to carry out their investment objectives. These commenters suggested that there will be other circumstances where this investment strategy is appropriate. | As a result of the 81-102 Amendments, non-redeemable investment funds will be subject to section 2.5 of NI 81-102, which will permit a non-redeemable investment fund to invest in other investment funds if the prescribed criteria are met. |

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| | Many commenters submitted that a non-redeemable investment fund should not be restricted to investing in mutual funds that are subject to the investment restrictions in NI 81-102 applicable to conventional mutual funds, especially where the underlying fund has no investors other than the top fund. These commenters believed that the top and underlying funds should be required to have consistent investment restrictions and strategies, which could be achieved through a carve-out from proposed paragraph 2.5(2)(a) of NI 81-102. | Change made. We have added paragraph 2.5(2)(a.1) of NI 81-102, which states that any investment fund in which a non-redeemable investment fund invests must either be subject to NI 81-102 or must comply with the provisions of NI 81-102 applicable to a non-redeemable investment fund. The CSA are of the view that the investment restrictions and other requirements of the top and underlying fund should be consistent. |
| | Further, a few commenters suggested that such a carve-out from proposed paragraph 2.5(2)(a) of NI 81-102 should be subject to certain conditions. For example, we were told that the carve-out could be conditional on the underlying fund adopting investment objectives and restrictions designed to achieve, either directly or through specified derivatives, the investment objectives of the top fund. These commenters noted that the investment objectives and restrictions of the underlying fund will not always be identical to those of the top fund because the objectives or restrictions of the top fund may relate to the payment of distributions, tax issues or the use of specified derivatives to obtain exposure to the underlying fund. | See response above. |
| | Another commenter suggested that the carve-out be conditional on the fund-of-fund structure not leading to an increase in net fees for the investor and that the structure not be used to get around the intent of the investment restrictions of the top fund. | See response above. The Amendments also include requirements that non-redeemable investment funds that invest in other investment funds comply with paragraphs 2.5(2)(d), (e) and (f) of NI 81-102, which prohibit the duplication of fees. |

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| | One commenter added that the securities of an underlying fund should be redeemable concurrently with its corresponding top fund. | No change. We expect managers to consider, among other things, the redemption rights of the securities of the underlying fund at the time of making a purchase of those securities. |
| | One commenter submitted that there should be no requirement for the underlying fund to have the same investment restrictions as the top fund. This commenter noted that there are examples of non-redeemable investment funds that currently do not satisfy this requirement in respect of their fund-of-fund investments. | The CSA recognize that there are a limited number of non-redeemable investment funds that invest in foreign investment funds which may not have the same operational requirements and investment restrictions as the non-redeemable investment fund. The CSA will consider applications for exemptive relief for non-redeemable investment funds to invest in such underlying funds on a case-by-case basis. |
| | One commenter expressed that any carve-out from paragraph 2.5(2)(a) of NI 81-102 that would permit a non-redeemable investment fund to invest in an underlying mutual fund that is not subject to NI 81-102 should also be available to mutual funds. | No change at this time. We will continue to consider requests for exemptive relief on a case-by-case basis. However, the CSA remain concerned about an investment fund doing indirectly (i.e., through an investment in another investment fund) what NI 81-102 would not permit it to do directly. As mutual funds are currently subject to more extensive investment restrictions under NI 81-102 than non-redeemable investment funds, the CSA are of the view that additional considerations apply to a mutual fund investing in other investment funds. |
| | A few commenters disagreed with the proposed restriction on non-redeemable investment funds investing in other non-redeemable investment funds.<br><br>One of these commenters submitted that it may be appropriate for a non-redeemable investment fund to invest in another non-redeemable investment fund | At this time, we are not finalizing the restriction on non-redeemable investment funds investing in other non-redeemable investment funds. We will continue to consider any benefits of such fund-of-fund structures and whether there should be further restrictions on these investments. As indicated in the Request for Comments, the restriction on investing in non- |

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| | when securities of the underlying fund are trading at a price that is significantly less than NAV and subsequently sold when the difference between the trading price and NAV narrows. We were told this strategy will result in a greater return for the top non-redeemable investment fund.<br><br>Another commenter submitted a restriction on a non-redeemable investment fund investing in another non-redeemable investment fund would prohibit non-redeemable investment funds from investing in a subsidiary if that entity were considered to be a non-redeemable investment fund. This commenter noted that this restriction would be inappropriate, as investments in subsidiaries and other investee entities are expressly contemplated by Form 41-101F2 (i.e., General Instruction 8).<br><br>Some of these commenters thought that the CSA's concern, that fund-of-fund structures involving non-redeemable investment funds would indirectly permit the top fund to employ more leverage than the amount permitted in the Proposed Amendments, could be addressed by requiring the top fund's leverage to be calculated on an aggregate basis taking into account the leverage of the underlying non-redeemable investment fund.<br><br>One other commenter did not think that the concern with overall maximum leverage achieved through a fund-of-fund structure involving non-redeemable investment funds should be addressed through an investment restriction imposed at the top fund level, | redeemable investment funds was based on the concern that a non-redeemable investment fund could circumvent the proposed leverage limit by investing in another non-redeemable investment fund. Since we are not moving forward with several of the proposed investment restrictions on non-redeemable investment funds at this time, including limits on leverage, we will revisit any restriction on a non-redeemable investment fund investing in another non-redeemable investment fund when we consider the investment restrictions applicable to non-redeemable investment funds concurrently with the Alternative Funds Proposals.<br><br>See response above.<br><br>See response above. |

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| | but instead left to the judgment of the portfolio manager. | |
| | Another commenter suggested that the restriction on non-redeemable investment funds investing in other non-redeemable investment funds be deferred and considered in conjunction with other proposed restrictions on bank borrowings and leverage, since the rationale of the proposed fund-of-fund restriction is to avoid the fund indirectly employing a greater amount of leverage than the fund is permitted to employ directly. | See response above. |
| | One commenter urged us to focus on ensuring adequate disclosure rather than restricting the type of investment fund whose securities a non-redeemable investment fund may purchase. This commenter noted that continuous disclosure can be provided on a look-through basis in accordance with applicable securities law and accounting principles under IFRS. This approach would be consistent with the CSA's approach under National Policy 41-201 *Income Trusts and Other Indirect Offerings.* | As discussed above, the CSA are not proposing to restrict the type of underlying fund in which a non-redeemable fund may invest at this time. Paragraph 2.5(2)(a) has been revised so that it no longer applies to non-redeemable investment funds. Paragraph 2.5(2)(a.1), which does apply to non-redeemable investment funds, has been added. A non-redeemable investment fund may invest in another investment fund provided the investment satisfies the criteria of subsection 2.5(2) of NI 81-102. |
| | One commenter asked us to clarify the type of underlying funds the Proposed Amendments would restrict a non-redeemable investment fund from investing in. This commenter was of the view that the Proposed Amendments appear to only prohibit investments in funds subject to NI 81-104, which would allow a top fund to invest in other types of funds that would cause the top fund to have substantial exposure to leverage. | See response above. |

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| | While one commenter agreed with the proposed restriction in 2.5(2)(c), which would restrict non-redeemable investment funds from investing in foreign investment funds, another commenter felt that it is not appropriate to limit investments in underlying funds to the domestic market. | The CSA recognize that there are a limited number of non-redeemable investment funds that invest in foreign investment funds which are not reporting issuers in Canada. The CSA will consider exemptive relief to permit non-redeemable investment funds to invest in such underlying funds on a case-by-case basis. |
| | This commenter submitted that some non-redeemable investment funds have global investment strategies and may need to invest in foreign investment funds to achieve their investment objectives. This commenter further suggested that investments in foreign investment funds not be restricted to mutual funds. Since non-redeemable investment funds do not require significant levels of liquidity to fund regular redemptions, a portion of the investment portfolio being invested in other non-redeemable investment funds is not a significant risk. | See responses above. |
| | All of the comments we received in response to the CSA's question about the proposed requirement for an underlying fund to be a reporting issuer in all of the jurisdictions in which the top non-redeemable investment fund is a reporting issuer expressed that this requirement would not enhance investor protection, and would only pass on unnecessary and ongoing costs to investors. | Change made. We have removed the requirement that a non-redeemable investment fund and the underlying fund in which it invests be reporting issuers in the same jurisdictions. Instead, we have added paragraph 2.5(2)(c.1) of NI 81-102, which requires that the underlying fund be a reporting issuer in at least one jurisdiction in which the non-redeemable investment fund is a reporting issuer. |
| | One commenter urged us to further investigate the reasons behind any requirement for underlying funds to become reporting issuers in every jurisdiction. This commenter questioned whether the current | See response above. |

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| | requirements create opportunities for regulatory or cost arbitrage, and suggested that new requirements may only be warranted if the current structure allows issuers to avoid providing investor protections in some jurisdictions and not others. | |
| | Many commenters believed that the current requirements are sufficient in addressing the CSA's objectives. These commenters noted that underlying funds currently only file a non-offering prospectus in Quebec (because of the AMF's policy position that providing exposure to an underlying fund would constitute an indirect offering in Canada) and occasionally in Ontario (to benefit from the limited liability provisions under the *Trust Beneficiaries Liability Act, 2004* (Ontario)). We were told that requiring an underlying fund to become a reporting issuer in at least one jurisdiction would meet the CSA's policy objectives because it will subject the underlying fund to National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) and continuous disclosure relating to the underlying fund would be made publicly available to investors on SEDAR. It was also suggested that requiring the fund to become a reporting issuer in all jurisdictions would be inconsistent with the CSA's principal regulator concept. | See response above. The CSA do not expect that the new requirement in paragraph 2.5(2)(c.1) of NI 81-102 will have an impact on current industry practices. Accordingly, investment funds should continue to consider whether any indirect offering issues arise which may require the underlying fund to file a prospectus in more than one jurisdiction. |
| | One commenter added that it would not be necessary for an underlying fund to become a reporting issuer in all jurisdictions, provided that the underlying fund does not offer securities in a jurisdiction in which the top fund is not a reporting issuer. | See response above. Although paragraph 2.5(2)(c.1) of NI 81-102 requires the underlying fund to be a reporting issuer in only one local jurisdiction, that jurisdiction must be one in which the top fund is a reporting issuer. |

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| | Another commenter added that many underlying funds are single purpose funds which are not directly available for purchase by investors, and full disclosure about the underlying fund is usually made in the prospectus of the top fund. This commenter suggested that the disclosure provided in the top fund prospectus, combined with the ongoing continuous disclosure provided by the underlying fund as a reporting issuer in one jurisdiction would provide sufficient information and protection for investors. | See response above. |
| | A few commenters questioned the need for an underlying fund to become a reporting issuer in the first place. We were told that this is unnecessary if the top fund undertakes to include look-through disclosure of the detailed holdings of the underlying fund in its prospectus and continuous disclosure.<br><br>One commenter expressed that the current requirement for an underlying fund to file a prospectus in Quebec and/or Ontario to become a reporting issuer is too rigid and does not provide investors with enhanced disclosure, but instead imposes additional costs and burdens. This commenter believed that the requirement to file a prospectus for an underlying fund should be examined on a case-by-case basis in light of the substantive elements and economics of the fund-of-fund structure. | No change. The CSA believe that requiring the underlying fund to be a reporting issuer in at least one Canadian jurisdiction ensures that the underlying fund is subject to the CSA's continuous disclosure regime in NI 81-106 and permits securityholders to readily access information about the underlying fund. The CSA also appreciate the opportunity to review the underlying fund's prospectus in order to fully review each specific fund-of-fund structure proposed to be offered to the public. |
| | Another commenter questioned the need for an underlying fund to become a reporting issuer given the CSA's broad public interest powers to intervene in | See response above. |

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| | activities related to the Canadian capital markets. This commenter noted that the CSA's broad jurisdiction does not depend on reporting issuer status and in most cases an underlying fund would have a sufficient nexus to a CSA jurisdiction. | |
| | Several commenters also submitted that there should not be a requirement for the prospectus of an underlying fund to be delivered to securityholders of the top fund. These commenters questioned the utility of such a requirement, given that the top fund's prospectus is required to provide full, true and plain disclosure in respect of the securities acquired by investors. It was also emphasized that the delivery of the prospectus of the underlying fund would impose additional cost without adding any legitimate benefit. | The CSA are not adding any requirements to NI 81-102 that would require a non-redeemable investment fund to deliver the prospectus of any underlying fund in which it invests to its securityholders. |
| | One commenter asked us to consider whether a carve-out from the concentration and control investment restrictions is required to permit a non-redeemable investment fund to use fund-of-fund structures. This commenter also requested that we clarify in 81-102CP that such a carve-out would be available in the case of compliance with the requirements of section 2.5, and any exemptions therefrom if the terms of the exemption are complied with. | At this time, the issuer concentration restriction does not apply to non-redeemable investments funds. Please see paragraph 2.2(1.1)(a) of NI 81-102, which states that the control restriction in section 2.2 does not apply to the purchase of a security of an investment fund, if the purchase is made in accordance with section 2.5 of NI 81-102. We are not making further changes at this time. |
| | One commenter urged us to undertake a study of the fees charged in fund-of-fund structures in order to determine whether they provide substantial benefits to investors in performance or risk and the extent of the detriment to investors in terms of increased fees. Absent this research, this commenter believed there is | No change at this time. The CSA believe that fund-of-fund structures should be permitted subject to the conditions in section 2.5 of NI 81-102. Section 2.5 continues to prohibit duplication of fees in fund-of-fund structures. |

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| | no compelling reason to permit a non-redeemable investment fund to invest in other investment funds. | |
| **Securities lending, repurchases and reverse repurchases (ss. 2.12 to 2.14)** | Commenters differed on the extent to which the securities lending, repurchase and reverse repurchase provisions of NI 81-102 should apply to non-redeemable investment funds.<br><br>One commenter supported extending the securities lending, repurchase and reverse repurchase provisions of Part 2 of NI 81-102 to non-redeemable investment funds.<br><br>On the other hand, a few commenters did not agree that there should be limits on securities lending, repurchase and reverse repurchase activities by non-redeemable investment funds, but stated that they would support certain additional disclosure requirements. These commenters felt that securities lending or repurchases can be a valuable source of income for investors in a non-redeemable investment fund and were concerned that these activities would be unduly limited based on assumptions regarding a prudent investment standard.<br><br>A few of these commenters felt that the focus of regulation in this sphere should be on the quality of collateral and on ensuring that there is full disclosure. These commenters also questioned how restricting the percentage of an investment fund's assets that may be loaned protects (or mitigates risk to) the investment fund. | No change. The CSA consider the framework for securities lending, repurchases and reverse repurchases contained in NI 81-102 to represent prudent practices, which are also in line with international proposals and discussions regarding guidelines for these types of activities by investment funds.<br><br>In addition to the application of sections 2.12 to 2.17 of NI 81-102 to non-redeemable investment funds, the CSA are also amending NI 81-106, Form 41-101F2, Form 81-101F1 and Form 81-101F2 to mandate additional disclosure regarding an investment fund's securities lending activities. See Part III of this Annex B.<br><br>NI 81-102 currently includes requirements with respect to the type and amount of collateral to be delivered to an investment fund with respect to securities lending and repurchases, and also restricts what an investment fund may do with that collateral. NI 81-102 also restricts the percentage of an investment fund's assets that may be loaned to mitigate the potential risk of loss to the investment fund. As a result of the 81-102 Amendments, these requirements will also apply to |

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| | | non-redeemable investment funds. |
| | According to one of these commenters, using repurchases to create leverage should not be impeded in favour of the requirements that apply to conventional mutual fund management, to the extent that this would increase costs or reduce incremental returns for no material net investor benefit. | No change made. As stated above, the CSA consider the securities lending, repurchase and reverse repurchase requirements of NI 81-102 to represent prudent practices which should apply to all publicly offered investment funds. We do not think that non-redeemable investment funds should be treated differently than mutual funds in respect of these types of activities. |
| | One commenter was of the view that there should be significant financial benefit to a non-redeemable investment fund from securities lending; otherwise, it should not be permitted. | No change made. The CSA do not generally take issue with a non-redeemable investment fund engaging in securities lending provided it is done in compliance with the requirements of NI 81-102 and with appropriate disclosure to securityholders. |
| **Organizational costs (s. 3.3(3))** | Most commenters disagreed with the CSA's proposal to restrict a non-redeemable investment fund from paying the costs of its incorporation, formation or initial organization (the organizational costs).<br><br>Many commenters told us that the organizational costs of a non-redeemable investment fund are largely imposed by regulation and, to that extent, are not discretionary. These commenters noted that the costs involved in bringing a non-redeemable investment fund to market are much higher than those associated with launching a mutual fund, and include preparing, filing, translating and printing a preliminary and final long form prospectus, the involvement of investment dealers, two sets of legal counsel, an auditor, external due diligence processes and a more extensive | After reviewing the extensive comments received, we have decided not to proceed with the Organizational Cost Proposals at this time.<br><br>However, the CSA remain concerned about the different treatment of mutual funds and non-redeemable investment funds with respect to the payment of organizational costs, particularly as this different treatment permits a manager to circumvent the restriction on a mutual fund paying its organizational costs by launching an investment fund in the form of a non-redeemable investment fund, and then converting the fund into a mutual fund after a short period of time.<br><br>While several commenters suggested that the CSA |

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| | regulatory approval process including obtaining TSX listing.<br><br>As a result of the non-discretionary nature of many of the organizational costs, some commenters conveyed that organizational costs are either fixed or relatively fixed and would be unlikely to change substantially in the event that they were paid by the manager instead of the non-redeemable investment fund. One such commenter added that managers already aim to minimize the organizational costs that are borne by their non-redeemable investment funds because the investment funds industry is highly competitive and managers who are unable to do so are at a competitive disadvantage.<br><br>Many commenters focused on the "investor protection" elements of the activities that comprise a non-redeemable investment fund's organizational costs, such as the involvement of the investment dealers in conducting a thorough due diligence review and the extensive regulatory approval process. A few of these commenters told us that, while the organizational costs of a mutual fund are lower than for a non-redeemable investment fund, mutual funds do not provide investors with the benefit of due diligence conducted by independent investment dealers.<br><br>Further, we were told that the costs of certain activities, such as meeting with advisors to explain the non-redeemable investment fund, provide investor benefit by increasing the size of a fund (which reduces the fund's MER and increases trading liquidity for the | focus on disclosure to ensure that the costs of establishing a non-redeemable investment fund, as well as the entity who bears those costs, are clearly disclosed, the CSA are of the view that disclosure may not be adequate to deal with the potential for regulatory arbitrage created by the different treatment of non-redeemable investment funds and mutual funds with respect to the payment of their organizational costs.<br><br>The CSA will continue to consider how to best address the potential for regulatory arbitrage. We may publish for comment, concurrently with the Alternative Funds Proposals, proposed amendments to NI 81-102 which would require the manager of a non-redeemable investment fund to reimburse the fund for its organizational costs if the non-redeemable investment fund converts to a mutual fund within a specified period of time after its initial public offering.<br><br>In order to address the potential for regulatory arbitrage in the meantime, the CSA are moving forward with introducing subsection 5.1(2) of NI 81-102, which restricts an investment fund from bearing any of the costs or expenses associated with, among other things, a conversion from a non-redeemable investment to a mutual fund. Furthermore, although it was suggested by one commenter that the CSA codify a carve-out from the restriction on a mutual fund bearing its own organization costs for the first prospectus of a mutual fund in connection with the conversion of a non-redeemable investment fund, the CSA are not introducing such a carve-out. |

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| | fund). Accordingly, these commenters suggested that it is reasonable for the related organizational costs to be indirectly borne by investors through payment out of the offering proceeds.<br><br>A few commenters suggested that the primary reason behind the prohibition on a mutual fund bearing its own organizational costs is that the mutual fund's start-up costs can be a substantial proportion of the mutual fund's initial NAV. Non-redeemable investment funds do not have this problem, as the minimum sizes of their public offerings are sufficiently large to bear the organizational costs.<br><br>Similarly, other commenters told us that the rationale for the prohibition on mutual funds paying organizational costs is that investors invest in mutual funds over time and, therefore, it would be inequitable for the first investors in a mutual fund to effectively pay for the organizational costs of the mutual fund. Since non-redeemable investment funds are distributed in one offering, these commenters suggested that investors are on an equal footing and no particular group is prejudiced by a non-redeemable investment fund paying the organizational costs from its offering proceeds.<br><br>Some commenters noted that requiring the manager to bear the organizational costs constitutes a significant departure from the position adopted in the past on offering expenses on the launch of exchange-traded mutual funds that are not in continuous distribution, a position that was determined based on the rationale | |

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| | noted above.<br><br>A few commenters noted that mutual fund managers recoup their much lower organizational costs over time through the continuous distribution process. Non-redeemable investment fund managers, however, have limited opportunity to grow their investor base over time.<br><br>Many commenters conveyed that shifting organizational costs to the manager will cause these costs to be borne by the non-redeemable investment fund in other ways, which will not result in cost savings for investors, but may instead result in an increase to the aggregate costs borne by investors.<br><br>For example, many commenters were of the view that managers would begin charging higher management fees to recoup the organizational costs, which fees will likely never be reduced once the organizational costs have been recouped. These commenters felt that, over time, an investor will almost certainly pay more through increased management fees than under the current model where the organizational costs payable by a non-redeemable investment fund are capped at 1.5% of the gross proceeds of the offering.<br><br>As evidence of this, some of these commenters noted that management fees of a mutual fund are generally higher than for a non-redeemable investment fund, which means that non-redeemable investment fund investors are compensated for the upfront absorption of the organizational costs. | |

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| | A few commenters took the position that another consequence of the Organizational Cost Proposals is that, as a manager will seek financing to cover the organizational costs, the costs associated with this financing will also be recouped through a higher management fee. Some of these commenters noted that the manager may also charge a form of risk premium to ensure that the manager would receive, over time, at least the organizational costs expended.<br><br>Certain commenters were also of the view that the Organizational Cost Proposals may result in the introduction of redemption fees to ensure recovery of organizational costs or that redemption rights may be delayed or reduced in order for the manager to ensure that assets are retained long enough to earn back the capital the manager invested in launching the non-redeemable investment fund.<br><br>A few of these commenters noted that redemption fees create misleading NAVs, since the investor will have to pay a fee to redeem out at NAV and the market price will be reduced to reflect this additional fee.<br><br>Many commenters were of the view that shifting organizational costs to the manager will not create incentives to reduce these costs, as the interest of managers with respect to organizational costs is already aligned with those of investors. In particular, managers of non-redeemable investment funds already seek to minimize organizational costs, as they are responsible for these costs in the event that the non-redeemable | |

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| | investment fund's offering is not successful.<br><br>In addition, many commenters told us that, for the last several years, market practice has required that organizational costs borne by a non-redeemable investment fund be capped at 1.5% of the gross proceeds of the fund's offering size. As a result, managers are also responsible for the organizational costs that exceed this cap and are already incentivised to seek cost efficiencies to minimize organizational costs beyond this cap.<br><br>A few commenters noted that industry practice is to have a non-redeemable investment fund raise a minimum amount of money (generally $20 million) before proceeding with its offering. In this way, organizational costs do not make up a large proportion of a non-redeemable investment fund's initial NAV.<br><br>A few commenters also told us that organizational costs of non-redeemable investment funds have decreased significantly over time. According to these commenters, many material agreements and much of the required prospectus disclosure have become standardized and, while costs will necessarily be higher for novel and complex products that require additional structuring and diligence, many significant aspects of these offerings require less legal involvement than previously.<br><br>Many commenters were of the view that the Organizational Cost Proposals would act as a barrier to entry, having a material detrimental impact on | |

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| | competition and stifling new entrants to the market and reducing the incentive to launch new funds.<br><br>According to these commenters, the Organizational Cost Proposals would favour managers with significant capital resources and would therefore contribute to a non-redeemable investment fund market dominated by a few very large players, which these commenters did not believe to be in the best interests of Canadian retail investors or capital markets generally. We were told this would result in a reduction of diverse and innovative products in the marketplace and it would be unlikely that investors would have an alternative means to access these strategies.<br><br>A few commenters submitted that the effect of the Organizational Cost Proposals is that the securities regulators may end up regulating the quantum of fees and prices, something that they have not historically done.<br><br>On this point, certain commenters were of the view that the market should continue to determine the allocation of organizational costs and that regulators should focus on disclosure (such as ensuring disclosure is provided on management compensation, the costs of establishing the fund and who bears the costs), rather than regulating the commercial practice of how to charge fees.<br><br>A few commenters noted that the long form prospectus for a non-redeemable investment fund prominently discloses that the organizational costs of the non- | |

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| | redeemable investment fund are paid by the fund. These fees, along with the ongoing fees of the fund, can be scrutinized and compared by investment dealers and their clients prior to any investment decision being made. According to these commenters, the organizational costs are part of the initial bargain made between the investors and the issuer.<br><br>Further, some commenters told us that the payment of organizational costs by a non-redeemable investment fund reflects investor expectations and is reflected in each non-redeemable investment fund's opening NAV.<br><br>One commenter noted that the largest part of the start-up costs of a non-redeemable investment fund are the agents' fees, which are not caught by the proposed subsection 3.3(3) of NI 81-102.<br><br>Many commenters focused on the CSA's objective of addressing the regulatory arbitrage created by launching an investment fund structured as a non-redeemable investment fund and then converting it into a mutual fund a short time after completion of the initial public offering.<br><br>Many of these commenters were of the view that regulatory arbitrage can be addressed by requiring investment fund managers to refund the organizational costs borne by a non-redeemable investment fund if it converts within a prescribed period following the closing of its initial public offering or if the intention to convert is not disclosed in the fund's initial prospectus. In the alternative, these commenters suggested that the | |

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| | CSA consider prohibiting non-redeemable investment funds from converting to mutual funds altogether.<br><br>One commenter suggested that managers be required to bear the portion of the organizational costs for a converting non-redeemable investment fund that would approximate the costs of launching the fund as a mutual fund.<br><br>Certain commenters felt that there is no need to level the playing field between mutual funds and non-redeemable investment funds, as a mutual fund manager is free to launch non-redeemable investment funds, and several have done so. A few commenters noted that the costs and risk of a failed launch for a non-redeemable investment fund are far greater than for a mutual fund, eliminating any benefit to preferring the non-redeemable investment fund space to the mutual fund one.<br><br>Another commenter suggested that the CSA codify a carve-out from the restriction on a mutual fund bearing its own organizational costs for the first prospectus of a mutual fund filed in connection with the conversion of a non-redeemable investment fund.<br><br>One commenter was of the view that there should be no difference between similar issuers that are not investment funds, such as real estate investment trusts or MIEs, who bear their own organizational costs, and non-redeemable investment funds.<br><br>A few commenters supported some sort of restriction | |

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| | on a non-redeemable investment fund bearing all of its organizational costs.<br><br>One commenter did support the Organizational Cost Proposals and was of the view that these proposals would achieve the benefits cited in the Request for Comments. This commenter also noted that, for mutual funds, managers currently pay the organizational costs and recoup such costs through ongoing management fees. According to this commenter, investors should not pay the organizational costs when they pay ongoing management fees for non-redeemable investment funds. This commenter felt that the Organizational Cost Proposals would also prevent managers launching non-redeemable investment funds that convert to mutual funds within a short period of time after the launch.<br><br>One commenter told us that investors purchase investment fund securities with the expectation that they will profit from the investment and it is only fair that they should bear a portion of the organizational costs of such fund. However, this commenter also suggested that discretionary costs associated with the launch or maintenance of a fund should be borne by the manager.<br><br>Similarly, one commenter noted that the different capital raising model followed by non-redeemable investment funds could support the agent's fee being paid by the fund and other flat fees being borne by the manager. | |

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| | One commenter conveyed that, if the CSA intend to regulate organizational costs, it would support a codification of the market practice that caps the amount of organizational costs payable by the non-redeemable investment fund at 1.5% of the gross proceeds of the offering. | |
| **Conflicts of interest provisions (Part 4)** | The majority of commenters agreed with the Proposed Amendments to extend the application of the conflicts of interest provisions in Part 4 of NI 81-102 to non-redeemable investment funds.<br><br>Some commenters further suggested that the provisions in NI 81-102 should be harmonized with the conflicts of interest provisions in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103), NI 81-107 and the applicable securities legislation of the provinces and territories of Canada.<br><br>One commenter agreed with applying conflicts of interest rules to non-redeemable investment funds, but disagreed with the exemptions provided where approval is given by the independent review committee of a fund. This commenter urged us to reconsider the independent review committee model for dealing with conflicts of interest of investment funds. | We thank commenters for their feedback.<br><br>The CSA do not propose to amend any of the conflicts of interest requirements in NI 31-103 or NI 81-107 at this time. We will consider harmonizing the conflicts of interest provisions in the various instruments in the context of future amendments to NI 81-107.<br><br>The review of the independent review committee model under NI 81-107 is not within the scope of the Modernization Project. |
| **Securityholder and regulatory approval requirements (ss. 5.1 to 5.6)** | Many commenters agreed with the proposed securityholder and regulatory approval requirements for fundamental changes to non-redeemable investment funds and their management, including new securityholder requirements in connection with | We thank commenters for their feedback. |

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| | conversions and mergers of non-redeemable investment funds.<br><br>A few of these commenters, however, submitted that while they agreed with the new securityholder approval requirement for changes to the nature of a non-redeemable investment fund, they disagreed with the proposed requirement that managers pay for the expenses associated with implementing that change. These commenters did not agree with the assumption that conversions and mergers are for the benefit of the manager. It was submitted that such changes are sometimes made as a result of regulatory changes or are proposed by the manager and viewed by the independent review committee of the fund as beneficial to securityholders.<br><br>Two commenters further emphasized that changes to the investment objectives, nature or structure of a non-redeemable investment fund are often necessary over the life of a fund due to regulatory, tax or market conditions, and are only proposed and approved on the basis that they benefit securityholders. These commenters submitted that the net benefits provided to | No change. The CSA believe that the restriction on an investment fund bearing the costs of changing the nature of the fund is consistent with the requirements for fundamental changes to investment funds by way of merger or reorganization. Since restructuring an investment fund offers managers the benefit of retaining fund assets under management, whether the restructuring is done through a merger or conversion, the CSA continue to be of the view that the costs of these transactions should not be borne by the investment fund.<br><br>Given that the CSA are not moving forward with the proposals to restrict a non-redeemable investment fund from paying its organizational costs, the CSA think that a manager paying for the conversion of a fund from a non-redeemable investment fund into a mutual fund will discourage any potential arbitrage opportunities where managers may launch mutual funds without paying the organizational costs (i.e., by creating a non-redeemable investment fund and then converting it into a mutual fund after a short period of time).<br><br>Under the Amendments, only the costs related to a change contemplated by paragraph 5.1(1)(h) of NI 81-102 may not be borne by the investment fund. See response above. |

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| | securityholders justify the fund bearing the costs of these changes. One commenter suggested that costs for fundamental changes be permitted to be borne by the fund if independent review committee approval is obtained. Alternatively, this commenter suggested that the CSA provide a list of changes that would not be deemed to be for the benefit of securityholders.<br><br>One commenter suggested that changes to the nature of an investment fund are so fundamental that approval of two-thirds of securityholders should be required for such a change. This commenter also expressed support for the proposed requirement that funds not bear the costs for these changes.<br><br>A few commenters expressed support for the codified exemptions from the proposed securityholder approval requirements for certain transactions, including (i) conversions of non-redeemable investment funds that are structured from inception to convert to a mutual fund upon the occurrence of a specified event, (ii) mergers involving specialized non-redeemable investment funds that have a limited life and that do not list or trade their securities on a secondary market (commonly referred to as flow-through funds), and (iii) mergers of non-redeemable investment funds with other funds where investors can redeem their securities of the fund at NAV prior to the merger.<br><br>One commenter suggested that the limited exemption from the securityholder approval requirement for a non-redeemable investment fund that is structured from | The CSA have not made any changes to the securityholder approval requirements in section 5.2 of NI 81-102 in connection with a change to the nature of an investment fund. We think the requirement for securityholder approval, and the restriction on an investment fund bearing the costs, of such a change adequately address the CSA's concerns.<br><br>After considering the comments received, the CSA have decided not to move forward with adding an exemption from the securityholder approval requirements for conversions of non-redeemable investment funds that are structured from inception to convert to a mutual fund upon the occurrence of a specified event.<br><br>As discussed above, the CSA are not moving forward with the proposals to restrict a non-redeemable investment fund from paying its organizational costs. Accordingly, the CSA think the requirement to obtain securityholder approval prior to a conversion from a non-redeemable investment fund to a mutual fund will mitigate the potential arbitrage of launching an investment fund in the form of a non-redeemable investment fund and then converting it to a mutual fund |

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| | inception to convert to a mutual fund, provided that the conversion is disclosed, be broadened to include other fundamental changes to a non-redeemable investment fund where the change is disclosed in the fund's offering documents. For example, this commenter suggested that the exemption may include changes to the method of investing, leverage or other investment restrictions when certain targets, events or dates are met. | shortly after launch, and will help ensure that the decision to convert will be in the best interests of securityholders, who will also have the opportunity to make an informed decision about the conversion.<br><br>In addition, the CSA consider a change to the nature of an investment fund to be a fundamental change that requires securityholder approval. The CSA are generally of the view that the investor benefit provided by the securityholder approval requirements in section 5.1 of NI 81-102 cannot be replaced with disclosure in the prospectus. |
| | One commenter, in addition to expressing support for the exemption from the securityholder and regulatory approval requirement for mergers involving flow-through funds, asked us to expressly state that these transactions are exempt from the prohibition on inter-fund trades in paragraph 13.5(2)(b) of NI 31-103. This commenter noted that this would be consistent with market and administrative practice. | No change made. See subsection 5.9(2) of NI 81-102, which, among other things, exempts transactions described in section 5.6 of NI 81-102 from the investment fund conflict of interest investment restrictions (as defined in NI 81-102). |
| | Another commenter disagreed with the exemption from regulatory approval for mergers involving flow-through funds and felt that such transactions could benefit from the review of regulatory authorities. This commenter suggested, however, that if any exemption from regulatory approval is provided for mergers involving flow-through funds, or if any exemption from securityholder approval is provided for non-redeemable investment funds that are structured from inception to convert to mutual funds upon a specified event, such an exemption should be conditional on | We have not made any changes with respect to the exemption from regulatory approval for mergers involving flow-through funds. The CSA expect the disclosure provided in connection with subparagraph 5.3(2)(b)(v) to be presented in an easy-to-read format and comply with plain language principles, as required by Form 41-101F2. See also the response above. We have removed the exemption from securityholder approval for non-redeemable investment funds that are structured from inception to convert to mutual funds upon a specified event. |

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| | prominent plain language disclosure in the prospectus and any sales communication materials of the applicable investment fund.<br><br>A few commenters expressed support for the CSA's proposal to redraft the requirement to obtain regulatory approval for a change in control of the manager. | Acknowledged. |
| **Termination of non-redeemable investment funds (s. 5.8.1)** | Two commenters agreed with the proposed requirement that a non-redeemable investment fund terminate no earlier than 15 days and no later than 30 days after filing a press release to disclose the intended termination.<br><br>Several other commenters, however, were concerned that the 30-day limit for a non-redeemable investment fund to terminate upon issuing a news release may not be a sufficient period of time to wind up the affairs of the fund in an orderly manner and may result in unnecessary loss of investor assets.<br><br>One commenter noted that the time required to wind up a non-redeemable investment fund is often beyond the control of the manager and will depend on such factors as the nature of the portfolio, the manager's ability to maximize securityholder value and the provision for the liabilities of the fund, which are also all dependent on prevailing market conditions.<br><br>Another commenter added that the 30-day time limit is operationally problematic because winding up a fund requires various regulatory, listing and other service providers to complete a number of tasks in a set order. | After considering the comments received, we have decided to extend the time period for which a non-redeemable investment fund may terminate after filing a press release disclosing the intended termination. See revised subsection 5.8.1(2) of NI 81-102, which requires that a non-redeemable investment fund terminate no earlier than 15 days and no later than 90 days after the filing of the news release.<br><br>The CSA continue to be of the view that this requirement ensures that securityholders of a non-redeemable investment fund have sufficient time to consider the consequences of the termination of the non-redeemable investment fund and, at the same time, ensures that the assets of the terminating fund are distributed to securityholders in a timely manner. |

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| | This commenter submitted that it may not be possible to meet this timing.<br><br>One commenter also submitted that it is particularly difficult to terminate a fund if the fund holds illiquid assets because those assets are more difficult to dispose of. This commenter suggested that the CSA consider allowing a manager to hold illiquid assets in trust on the wind-up of a fund as a principled and practical solution for disposing of assets with nominal value. We were told that this provision would also require a carve-out from the self-dealing provisions.<br><br>One commenter recommended a limit of 90 days to terminate a non-redeemable investment fund, which would allow sufficient time for a non-redeemable investment fund to liquidate its portfolio in an orderly manner and to wind up its affairs.<br><br>Another commenter suggested that it would be appropriate to permit the manager of a non-redeemable investment fund to set the final termination date, which would allow the manager to consider matters including the orderly liquidation of the portfolio, the termination of contractual consents and any external approvals that may be required. | |
| **Custodianship of portfolio assets (Part 6)** | The majority of commenters agreed with the Proposed Amendments to update the custodian requirements in NI 81-102 and apply the updated NI 81-102 requirements to all non-redeemable investment funds that are reporting issuers (the Custodial Amendments), and not only those that file a prospectus under National | We thank commenters for their feedback. |

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| | Instrument 41-101 *General Prospectus Requirements* (NI 41-101).<br><br>One commenter questioned the CSA's view that the Custodial Amendments would not result in substantive changes to the custodian requirements for any investment funds, given that the requirements will apply to all investment funds, and not only those that file a prospectus under NI 41-101. This commenter submitted that pooled funds are not subject to NI 41-101 or NI 81-102 and would not be aware of the Custodial Amendments. It was recommended that, if we intend to require all non-redeemable investment funds to comply with the custodian requirements, we publish a separate notice specifically for the hedge fund industry. | The Amendments in respect of Part 6 of NI 81-102 do not apply to non-redeemable investment funds that are not reporting issuers. Prior to the Amendments coming into force, the custodianship requirements for non-redeemable investment funds are provided in Part 14 of NI 41-101. As a result, non-redeemable investment funds that filed a prospectus before NI 41-101 came into force are not subject to those requirements. In the Request for Comments, the CSA conveyed that the consequence of moving the custodianship requirements for non-redeemable investment funds from NI 41-101 to NI 81-102 is that the custodianship requirements will now apply to all non-redeemable investment funds that are reporting issuers, regardless of whether they became a reporting issuer prior to NI 41-101 coming into force. |
| | One commenter expressed that a consequence of the Custodial Amendments will be that MIEs in Alberta, which qualify as non-redeemable investment funds, would not be able to hold their mortgage investments directly, but will have to use a custodian. This commenter noted that Alberta and some other jurisdictions have a government-operated land titles registry, which means that the government has custody of all original titles, documents and plans and has legal responsibility for the validity and security of all registered land title information. We were told that a custodian in such circumstances would only add costs without any additional benefits, since the government | As a result of paragraph 2.3(2)(b) of NI 81-102**,** non-redeemable investment funds that are reporting issuers will no longer be permitted to purchase non-guaranteed mortgages. We encourage issuers to consult with staff of the local jurisdiction should any questions arise in respect of compliance with these requirements**.** |

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| | operated land titles registry already secures the MIE and the MIE's investors. As a result, this commenter recommended that an exception from the custodian rules be provided for mortgages held in government land titles systems. | |
| **Issue price of securities (ss. 9.3(2) and (3))** | Many commenters expressed support for the proposed requirements that non-redeemable investment funds not issue securities at a price that would be dilutive to the NAV of the fund.<br><br>Two commenters, however, expressed concern that subsection 9.3(2) as drafted, would introduce uncertainty in the pricing of a new issue offering of a non-redeemable investment fund. These commenters suggested that we amend the rule to permit the price of the offering to be fixed based on the most recent determined NAV prior to the pricing of the offering. | We thank commenters for their feedback.<br><br>Change made. We recognize that compliance with proposed subsections 9.3(2) and (3) of NI 81-102 may not have been practicable in certain offerings of non-redeemable investment funds. In particular, for some new offerings, such as private placement offerings or offerings made under a PREP prospectus, the pricing date may be different than "one business day before the date of the prospectus." Accordingly, we have replaced proposed subsections 9.3(2) and (3) with subsection 9.3(2) of NI 81-102, which requires that the issue price of a security of a non-redeemable investment fund not be, as far as reasonably practical, a price that causes dilution of the NAV of other outstanding securities of the investment fund at the time the security is issued, or, a price that is less than the most recent NAV per security calculated prior to the pricing of the offering. See also section 10.6 of 81-102CP, which provides guidance on how the CSA will interpret subsection 9.3(2) and sets out practices regarding the pricing of non-redeemable investment fund securities that the CSA do not consider to be dilutive to existing securityholders. |

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| | Another commenter asked us to consider also implementing a rule that would require a non-redeemable investment fund issuing new securities to its manager as payment of management fees to disclose the price of those new securities. This commenter noted that the disclosure would be particularly helpful in the case of funds holding illiquid assets. | Given subsection 9.3(2) of NI 81-102, the CSA expect that any issuances of new securities to the non-redeemable investment fund's manager as payment of management fees be issued at a price that is not less than the NAV per security on the date of issuance. See section 10.6 of 81-102CP. At this time, the CSA are not introducing disclosure requirements with respect to this issue. |
| **Warrant offerings (Part 9.1)** | A few commenters agreed with the prohibition on warrant offerings for the policy reasons cited by the CSA in the Request for Comments.<br><br>However, many commenters were of the view that a blanket prohibition on warrant offerings would be unduly prohibitive and would remove one of the least costly methods of raising additional capital for non-redeemable investment funds.<br><br>Several commenters submitted that the assets of a non-redeemable investment fund typically deplete over time as a result of the annual redemption feature and any purchases under a normal course issuer bid. These commenters suggested that, unless a non-redeemable investment fund replenishes its assets and increases the number of outstanding securities, securityholders will be negatively impacted by increases to the fund's MER and decreases to the fund's trading liquidity. It was emphasized that maintaining or lowering the fund's MER preserves or increases the fund's NAV, which ultimately influences the fund's yield and trading price on the exchange. | We thank commenters for their feedback.<br><br>No change. While the CSA recognize that warrant offerings may offer certain benefits to an investment fund, we continue to think the potential dilution faced by existing securityholders often outweigh any potential benefit. In order to ensure that existing securityholders of a non-redeemable investment fund are not coerced into investing additional capital into the investment fund or paying additional fees to raise additional capital for the fund, the CSA continue to be of the view that investment funds should be restricted from issuing warrants or rights, or from entering into a position in a specified derivative the underlying interest of which is a security of the investment fund.<br><br>In limited and exceptional circumstances, if a non-redeemable investment fund can demonstrate market necessity and where steps are taken to mitigate any potential dilution and conflicts of interest for the non-redeemable investment fund so that the benefits of the |

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| | In addition to lowering the MER and increasing the trading liquidity of a non-redeemable investment fund, several commenters submitted that warrant offerings offer benefits such as providing a non-redeemable investment fund with additional capital that can be used to take advantage of attractive investment opportunities and increasing diversification and investment options for a fund's portfolio. | warrant offering outweigh any costs of dilution, the CSA may consider applications for exemptive relief. |
| | We were told that filing a prospectus to issue new units or shares is not always an appropriate substitute for warrant offerings to raise additional capital for a non-redeemable investment fund. These commenters submitted that issuing new units or shares is often not viable because a non-redeemable investment fund's securities would have to trade at a price that is at least 4.5% to 6% higher than their NAV in order to incentivise investors to purchase securities from the new offering and to justify the costs of the offering. Since most non-redeemable investment funds trade at a price that is less than their NAV, there are relatively few funds that can effectively raise money under such circumstances. Further, we were told that the offering expenses of new share or unit issues typically exceed 4% of the issue price, whereas the costs related to warrant offerings, including the preparation of the prospectus, are generally lower. | See response above. |
| | Some commenters thought that concerns about dilution are lessened if warrants have exercise prices that would not be dilutive to the NAV of the non-redeemable investment fund at the time the exercise price is | While the CSA recognize that warrants with short term exercise periods raise fewer concerns in respect of dilution, the CSA are not satisfied that the risks of dilution to existing securityholders are sufficiently |

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| | determined. Further, it was submitted that warrant offerings would only cause minor dilution if the exercise period is short. One commenter suggested, therefore, that only long-dated warrants be prohibited. | mitigated. As discussed above, the CSA may consider exemptive relief in exceptional circumstances. |
| | One commenter, while noting that industry practice has moved away from the use of warrant offerings to raise capital for a non-redeemable investment fund, agreed with other commenters that there may be certain circumstances where the benefits of a warrant offering would outweigh the costs of moderate dilution to the fund. | See response above. |
| | A few commenters were of the view that a prohibition on warrant offerings ignores the fundamental aspects of non-redeemable investment funds that distinguish them from mutual funds. Since securityholders of non-redeemable investment funds generally obtain liquidity by trading the fund's securities on an exchange, these commenters suggested that NAV dilution is less relevant for a non-redeemable investment fund than it is for a mutual fund.<br><br>These commenters emphasized that the key benchmark by which investors measure the value of a non-redeemable investment fund is the market price of the fund's securities, which is affected by factors other than NAV, such as yield, liquidity, fees, performance, and term to maturity. As a result, it was submitted that warrant offerings must be evaluated for their positive effects on the trading price of a non-redeemable investment fund's securities in addition to any dilutive effects on NAV. | While the CSA recognize that factors in addition to NAV are significant for investors of non-redeemable investment funds, the CSA continue to have concerns about the potential dilution to NAV resulting from warrant offerings. It appears to the CSA that NAV is a significant consideration for investors when measuring the value of a non-redeemable investment fund. The CSA note, for example, that the majority of non-redeemable investment funds are structured with an annual redemption feature to permit redemptions of their securities at NAV, which supports the trading price of the fund's securities such that the securities trade at a price that is close to NAV. |

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| | A few commenters also submitted that securities of a non-redeemable investment fund are more analogous to common shares of a corporate listed issuer than to units of a mutual fund, and, accordingly, warrant offerings by non-redeemable investment funds are analogous to rights offerings by corporate issuers. Some commenters noted that even though rights offerings are frequently conducted at a discount to market price (similar to warrant offerings), there are no equivalent restrictions on public companies based on the same concerns regarding dilution or coercion. One commenter submitted that the mere fact that an investment fund is able to calculate NAV, while a public company cannot, is not sufficient to justify different regulation. | The CSA consider the concept of NAV to be a fundamental distinguishing feature between an investment fund and an issuer that is not an investment fund. Accordingly, the CSA continue to have concerns about the potential dilution to NAV resulting from warrant offerings by investment funds. |
| | Several commenters also disagreed with the view that warrant offerings may be coercive to securityholders who are obligated to make an additional investment in the fund or face the risk of dilution. Some commenters emphasized that warrants are not prejudicial to investors when they are listed on an exchange because securityholders are able to realize their value if they choose not to exercise their warrants. We were told by one commenter that warrant offerings can even be profitable to investors who sell their warrants on the exchange, regardless of whether any of the warrants are exercised. | While the CSA recognize that warrants which are listed on an exchange may mitigate some of the concerns in respect of coercive warrant issuances, the CSA are not satisfied that such listings will always be effective or sufficient to compensate investors who do not exercise their warrants for the loss of the value of their securities. |
| | A few commenters submitted that warrant offerings are fair to existing securityholders because they provide them with an equal opportunity to participate in the offering and the ability to preserve their proportionate | See responses above. |

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| | share in the non-redeemable investment fund. One commenter believed that by virtue of their current ownership, existing securityholders are presumably satisfied with their investment and are more knowledgeable and favourably predisposed to buy additional securities of the non-redeemable investment fund. This commenter also noted that securityholders purchasing additional securities through warrants may incur lower commission costs than purchasing them on the secondary market, and they may be able to purchase larger quantities of securities without increasing the market price of those securities. | |
| | One commenter suggested that, rather than prohibiting warrant or rights offerings, the CSA could stipulate a maximum discount to the trading price that could be utilized in any such offering. | No change. |
| | A few commenters also disagreed that investors of non-redeemable investment funds may not expect the fund they invest in to seek additional capital from them after their initial investment. These commenters submitted that warrant offerings are not uncommon in the non-redeemable investment fund market and investors are aware of them. To address the CSA's concerns, some commenters suggested that non-redeemable investment funds be permitted to issue warrants and rights if this ability is disclosed in the fund's prospectus, or with securityholder approval if not disclosed in the prospectus. Such prospectus disclosure would include the risks associated with warrant offerings and the conditions under which warrants may be issued. | The CSA have observed that, over the last few years, non-redeemable investment funds have generally moved away from the use of warrant offerings as a way to raise capital for a non-redeemable investment fund. We are of the view that disclosure will not address the CSA's concerns outlined in the Request for Comments and discussed above. |

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| | Several commenters were of the view that the decision to issue warrants should be left to market practice and the discretion of managers, who would assess whether the warrant offering would be in the best interest of securityholders in light of the potential benefits to the non-redeemable investment fund and the potential dilution to the NAV of the fund's securities. These commenters submitted that, since warrant offerings raise potential conflicts of interest issues for the manager, proposed offerings are often referred to the independent review committee of the fund for its review in accordance with NI 81-107 prior to the manager proceeding with the offering.<br><br>Two commenters noted that the securities rules in the United Kingdom and the United States permit non-redeemable investment funds to issue warrants and rights to existing securityholders with an exercise price that is below NAV. These commenters suggested that there is no policy rationale for the CSA to differ from those jurisdictions. | See responses above.<br><br>See responses above. |
| **Redemption of securities (Part 10)** | Several commenters generally agreed with the proposed amendments in connection with redemptions by non-redeemable investment funds, including the requirements that (i) a fund pay redemption proceeds within 15 business days of the redemption date, (ii) redemptions not be effected at prices that are greater than NAV, and (iii) a fund be permitted to suspend redemptions in certain circumstances.<br><br>Some commenters expressed support for the proposed requirement that non-redeemable investment funds | We thank commenters for their feedback. The Amendments include these provisions.<br><br>Subsection 10.1(4) of NI 81-102 provides that the requirement that non-redeemable investment funds |

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| | send an annual reminder to investors regarding the procedure for exercising redemptions, while others disagreed with the requirement or sought clarification of what would be acceptable in meeting those requirements.<br><br>A few commenters questioned whether the annual reminder must be in the form of a separate mailing, from which securityholders may not opt out, or whether the requirement could be satisfied by including disclosure in the non-redeemable investment fund's annual information form or management report of fund performance (MRFP), or in the bulletins issued by CDS Clearing and Depository Services Inc. (CDS). Some commenters submitted that a separate mailing would add unnecessary costs to investors. | send investors an annual reminder of the procedures for exercising redemptions does not necessarily require that the reminder be in the form of a separate mailing to securityholders, as long as the requirements are described in any document that is sent to all securityholders in that year. This is intended to ensure securityholders will be informed on an annual basis of their redemption rights. |
| | One commenter noted that any requirement to send investors an annual reminder of redemption procedures would have to be completed by dealers, and many dealers already send annual reminders of redemption dates to their clients. This commenter suggested that these reminders are sometimes confusing and the use of a standard form should be required so that it is clear to investors that the right to redeem is optional. | Non-redeemable investment funds will have the flexibility to determine the form of the annual reminder of the fund's procedures for exercising redemptions. This includes flexibility for a non-redeemable investment fund to include disclosure in the annual reminders that redeeming securities of the fund is optional. |
| | One commenter questioned the need to regulate the timing of the payment of redemption proceeds by non-redeemable investment funds. | The CSA consider a timeline for investors to receive their redemption proceeds to be a basic investor protection. We continue to think 15 days is a practicable timeline for non-redeemable investment funds. |
| | One commenter disagreed with the proposed | No change at this time. |

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| | requirement that the redemption price of a non-redeemable investment fund's security not be a price that is more than the NAV of the security (the redemption price requirement). This commenter submitted that redeeming securities at a price that is more than the NAV of those securities does not always dilute remaining securityholders. For example, where a non-redeemable investment fund is invested in a credit default swap, there may be instances where the fund unwinds a portion of the credit default swap agreement to fund annual redemptions, and the fair value of the amount released by the counterparty to fund redemptions is greater than the proportionate share of the NAV invested in the swap. We were told that this excess amount paid to securityholders is borne by the counterparty to the swap agreement and not by the fund, and, therefore, does not dilute the other securityholders of the fund. As a result, it was suggested that the redemption price requirement only apply in circumstances where remaining securityholders would be diluted.<br><br>This commenter also submitted that the redemption price requirement may prohibit existing non-redeemable investment funds that offer quarterly redemptions based on the market price of the fund's securities from fulfilling their obligations when the fund's securities are trading at a price that is higher than NAV.<br><br>One commenter recommended that non-redeemable investment funds also be required to publicly disclose details of the annual redemption through a press | No change at this time. Redeeming securities of a non-redeemable investment fund at a price higher than the net asset value of those securities causes a reduction in the net asset value of the other securities of the non-redeemable investment fund. In the CSA's view, preventing this type of dilution is a core protection for investors.<br><br>No change at this time. Under Item 15.1 of Form 41-101F2, non-redeemable investment funds will be required to disclose the amounts that may be deducted |

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| | release. This commenter suggested that such annual disclosure include:<br>• the number of securities tendered for redemption;<br>• the number of securities taken up for annual redemption, if the amount of redemptions are capped;<br>• the NAV applicable on the redemption date;<br>• the actual amount of proceeds payable to redeeming investors after deducting redemption costs, charges and other deductions;<br>• the redemption charges and any penalties deducted from NAV in order to calculate redemption proceeds; and,<br>• any other relevant matters that affect the calculation or payment of redemption proceeds.<br><br>This commenter was of the view that redemption charges are typically not adequately disclosed in prospectuses or continuous disclosure documents and that information regarding the historical practices of the manager with respect to redemptions is useful for investors. | from the net asset value per security from the redemption proceeds payable to redeeming securityholders. At this time, we consider this additional disclosure requirement, along with the required disclosure in the financial statements of the aggregate amounts paid on redemptions of securities of the non-redeemable investment fund, to be adequate. The CSA will continue to consider whether additional disclosure requirements related to redemptions by non-redeemable investment funds will be beneficial. |
| **Commingling of cash (Part 11)** | A few commenters expressed support for the Proposed Amendments that would apply the provisions relating to the holding of monies from sales and redemptions in a trust account to non-redeemable investment funds.<br><br>However, several commenters noted that, unlike mutual funds, non-redeemable investment funds are held on a non-certificated basis through the book-entry only system of CDS. We were told that net sales proceeds from an offering of non-redeemable | We thank commenters for their feedback.<br><br>See new subsection 11.4(1.3) of NI 81-102, which states that section 11.1 of NI 81-102 does not apply to CDS. We have not included transfer agents or registrars of an investment fund in the exemption from section 11.1 of NI 81-102. The CSA note that there is |

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| | investment fund securities are transferred directly from the lead agent to the fund's custodial account and distributions and redemptions are typically transferred from the custodial account through certain qualified transfer agents to be effected through CDS.<br><br>As a result, these commenters submitted that there is no opportunity for commingling of cash and the trust account requirements should not apply to such qualified transfer agents or CDS. It was recommended that we define a "qualified transfer agent" as an "entity appointed as transfer agent or registrar of an investment fund that satisfies the requirements of section 6.2", and that we include an exemption from sections 11.1 and 11.2 of NI 81-102 for CDS or qualified transfer agents in subsection 11.4(1) of NI 81-102. | currently no exemption from section 11.1 of NI 81-102 for transfer agents of mutual funds, and we are not aware of any issues with mutual funds complying with this requirement. |
| **Record dates (Part 14)** | Many commenters agreed with the Proposed Amendments to apply the record date requirements of NI 81-102 to non-redeemable investment funds.<br><br>Several of these commenters also submitted that the proposed record date requirements should not apply to mutual fund rollover transactions by flow-through funds. It was suggested that an exemption be provided in section 14.1 of NI 81-102 or that guidance be added to 81-102CP to clarify that the requirements for setting record dates do not apply to these transactions. | We thank commenters for their feedback. After considering the comments received, the CSA have decided not to apply Part 14 of NI 81-102 to non-redeemable investment funds.<br><br>The CSA recognize that the majority of non-redeemable investments funds list their securities on an exchange and are already subject to the requirements of the exchange in respect of setting record dates. The CSA also note that the remaining non-redeemable investment funds that do not list their securities on an exchange are primarily flow-through limited partnerships, which must comply with applicable limited partnership legislation for setting record dates that may conflict with the proposed amendments to NI 81-102. Accordingly, Part 14 of NI 81-102 will not |

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| | | apply to non-redeemable investment funds. |
| **Sales communications (Part 15)** | Many commenters supported the extension of the sales communications requirements in Part 15 of NI 81-102 to non-redeemable investment funds, so long as the requirements recognize the differences between mutual funds and non-redeemable investment funds.<br><br>In particular, two commenters expressed support for the proposed requirement that a mutual fund which has previously existed as a non-redeemable investment fund present past performance data for the period that it existed as a non-redeemable investment fund.<br><br>One commenter submitted that the proposed sales communications requirements would not permit the presentation of after tax returns, which is relevant for investors holding certain funds, such as flow-through funds. This commenter expressed that, due to the unique features of non-redeemable investment funds, sales communication requirements need to be sufficiently flexible to allow for presentation of information that permits investors to properly assess the performance of their investment. | The CSA consider that the sales communications requirements in the Amendments appropriately recognize the differences between mutual funds and non-redeemable investment funds.<br><br>We thank commenters for their feedback.<br><br>The purpose of the sales communications requirements in Part 15 of NI 81-102 is to ensure that sales communications of non-redeemable investment funds contain relevant information and are not misleading. Non-redeemable investment funds are encouraged to contact staff of the local jurisdiction should questions arise on whether proposed sales communications comply with Part 15 of NI 81-102. |
| **Securityholder records (Part 18)** | A few commenters expressed support for the application of securityholder record requirements in Part 18 of NI 81-102 to non-redeemable investment funds.<br><br>One commenter suggested, however, that section 18.1 should not apply to limited partnerships. | We thank commenters for their feedback.<br><br>No change. The CSA are of the view that limited partnerships can comply with both NI 81-102 and the rules in respect of securityholder records under |

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| | Several commenters submitted that, unlike mutual funds, non-redeemable investment funds are book-entry only through the facilities of CDS and, accordingly, CDS is the sole registered securityholder. As such, a non-redeemable investment fund's securityholder records are necessarily more limited than a mutual fund's. These commenters sought confirmation that this is acceptable to the CSA. | applicable limited partnership legislation.<br><br>The CSA recognize that CDS is the sole registered securityholder for many non-redeemable investment funds. See subsection 15.1(2) of 81-102CP. |

| **Part III - Comments on securities lending, repurchases and reverse repurchases by investment funds** | | |
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| **Questions** | **Comments** | **Responses** |
| **1. Are there other costs of conducting securities lending, other than the fee paid to the lending agent?** | Some commenters told us that, generally, all securities lending costs incurred by investment funds are paid by the securities lending agent, who receives a fee from the fund (that is taken out of the securities lending revenue) for its services.<br><br>Another commenter submitted that the only costs of conducting securities lending, other than the lending agent's fee, are the customary legal and administrative costs associated with entering into the securities lending arrangement itself.<br><br>However, one commenter told us that certain funds may pay certain transaction-related costs directly, which include custodial charges, transaction fees, market fees and service provider charges. | We thank commenters for their feedback. |

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| | Furthermore, this commenter indicated that some managers charge a fee for overseeing the securities lending program, and investment funds that invest the cash collateral they receive in a money market fund may also incur a management fee for that investment.<br><br>A few commenters emphasized that, as investment funds only receive securities lending revenue net of the lending agent's share, a fund does not pay for the agent's share and, therefore, there is no "cost" to securities lending. | |
| **2. What approaches could the CSA consider to ensure that the financial statements of an investment fund disclose the revenue from securities lending inclusive of the share paid to the agent? What approaches could the CSA consider to ensure that the financial statements of an investment fund disclose the costs of securities** | Commenters had different views regarding disclosure of gross revenue from securities lending in an investment fund's financial statements.<br><br>A few commenters suggested that disclosure of gross revenue from securities lending could be addressed through a requirement for additional note disclosure in the financial statements, such as a tabular reconciliation of gross lending income and payment amounts for the reporting period to the securities lending income amount presented in the statement of operations. One such commenter also submitted that the notes to the financial statements could also disclose the material terms of lending agent compensation, including disclosure of any fees incurred by the fund in connection with securities lending.<br><br>One commenter suggested requiring a presentation of gross securities lending amounts for income and any offsetting payments within the revenue category of the statement of operations. | We thank commenters for their feedback.<br><br>The CSA agree with the approach of requiring additional note disclosure in the financial statements of an investment fund. See new subsections 3.8(4) and (5) of NI 81-106. We believe these new subsections will result in clearer and more transparent disclosure regarding the costs of securities lending by investment funds.<br><br>The CSA are of the view that subsections 3.8(4) and (5) of NI 81-106 are adequate to achieve our objective of requiring an investment fund's financial statements to disclose the revenue from securities lending |

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| **lending?** | Another commenter was of the view that the CSA should ensure that securities lending revenue is disclosed inclusive of the share paid to the securities lending agent by requiring that funds only be permitted to lend under agreements that specify that agents will provide full and complete disclosure of lending revenue received by the agent and any associated party, with a detailed breakdown of associated costs. According to this commenter, managers should be required to include costs that are expenses paid to third parties, and in addition, any cost of its own expended for securities lending.<br><br>A few commenters were of the view that the revenue sharing arrangement between an investment fund and its lending agent is proprietary or may be subject to non-disclosure agreements because of competitive concerns. According to these commenters, mandated disclosure of this information will impact the competitive landscape of the securities lending industry and may result in service providers being less likely to provide concessions on terms and fees while providing little to no added benefit.<br><br>One such commenter told us that it would support additional disclosure regarding revenue sharing arrangements between the fund and the lending agent where the manager is acting as the securities lending agent or where the agent is someone other than the custodian of the fund.<br><br>Some commenters were of the view that it is not | inclusive of the share paid to the securities lending agent.<br><br>Accordingly, we are not proceeding with other proposals relating to the disclosure of revenue and costs of securities lending by investment funds at this time.<br><br>While the CSA recognize that managers and securities lending agents may wish to keep information regarding revenue sharing arrangements confidential, we are of the view that this information is important for investors, especially in light of the potential conflicts of interests that may arise in cases where the securities lending agent of an investment fund is an affiliate of the manager.<br><br>The disclosure required by subsections 3.8(4) and (5) of NI 81-106 is intended to provide information regarding the revenue sharing arrangement between an investment fund and its securities lending agent so that investors will be better able to understand the total costs and returns of the investment fund's securities lending activities. Currently, investors do not have information concerning what amounts, if any, are received by the securities lending agent out of the amount generated from an investment fund's securities |

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| | meaningful for an investment fund's financial statements to disclose the revenue from securities lending, inclusive of the share paid to the securities lending agent, and then show the agent's share as an additional cost. As investment funds using lending agents can never earn 100% of the lending revenue, these commenters thought that disclosing gross revenue will only inflate the income while providing no additional benefit to the reader of the financial statements. According to one of these commenters, disclosure of gross revenue, and the share of the agent's revenue as a cost to the fund, does not appear to match the cash flow of the transaction.<br><br>One commenter noted that, as the revenue generated from securities lending, repurchases and reverse repurchases for an investment fund is minimal, and the portion paid to the lending agent is generally *de minimis*, additional disclosure regarding the revenue sharing arrangement should not be required. This commenter felt that the preferable approach is for the independent review committee to review and approve securities lending, repurchase and reverse repurchase arrangements. | lending activities. The CSA are of the view that such information is relevant to investment fund securityholders, particularly where the securities lending agent is an affiliate of the manager or where it provides other services to the investment fund (e.g., custodial services), as the fees otherwise charged to the fund by the manager or the service provider may be reduced as a result of receiving a portion of the amount generated from the securities lending activities. As a result, the true cost of owning securities of the investment fund would not be transparent to securityholders.<br><br>The CSA also think that, by requiring all investment funds to provide disclosure about their revenue sharing arrangements, whether or not the securities lending agent is related to the manager, investors will also have the benefit of comparing this information across different investment funds and fund families.<br><br>See responses above. The CSA do not consider the disclosure required by subsections 3.8(4) and (5) of NI 81-106 to be onerous and we think that the costs of providing such disclosure are outweighed by the benefits. |
| **3. What approaches could** | Most commenters agreed that, from an accounting standpoint, the fees paid to the securities lending agent | After reviewing the comments received, the CSA are not proceeding with a requirement to include the fees |

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| **the CSA consider to ensure that the costs of securities lending are included in either the management expense ratio or the trading expense ratio of the investment fund?** | are not a cost of engaging in securities lending activities, and therefore, these fees should not be included in the calculation of an investment fund's MER or trading expense ratio (TER). One such commenter told us that it would be more accurate and meaningful to disclose the costs of securities lending as a reduction in the gross return from securities lending (i.e., as an offset against revenue).<br><br>A few commenters suggested that the CSA take into consideration the views of applicable professional accounting bodies in any proposed revisions to the rules governing the preparation of financial statements and MRFPs, as the disclosure of the securities lending agent's share of the securities lending revenue as an expense may be inconsistent with accepted accounting treatment of securities lending revenue, given that the agent is entitled to its share before remitting net revenue to the investment fund.<br><br>One commenter suggested that the costs of securities lending and repurchases do not need to be disclosed given their *de minimis* levels and the competitive landscape.<br><br>One commenter submitted that requiring inclusion of the fees paid to the securities lending agent in an investment fund's MER may prompt funds to discontinue their securities lending activities, which the commenter felt was not in a fund's best interests. | paid to the securities lending agent in an investment fund's MER or TER. We think that the disclosure required by subsections 3.8(4) and (5) of NI 81-106 adequately addresses the CSA's concerns that investors receive continuous disclosure regarding the amount of the securities lending revenue generated by their investment fund that is retained by the securities lending agent.<br><br>The CSA have considered applicable accounting rules in drafting the Securities Lending Disclosure Requirements. While the CSA accept the view that the costs of securities lending by an investment fund, particularly the fees paid to the securities lending agent, may not technically be considered an "expense" from an accounting standpoint, the CSA are of the view that the costs of securities lending by an investment fund are relevant for investors. As a result, while the disclosure required by subsections 3.8(4) and (5) of NI 81-106 will provide information about such costs, we also think this disclosure will not impact the MER disclosed by investment funds. |
| **4. We think that the disclosure of** | Commenters who responded to this question agreed that disclosure regarding the returns and costs of | After reviewing the comments received, the CSA are not requiring that disclosure regarding securities |

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| **the returns and the costs of repurchases should be the same as the disclosure of securities lending, since both activities are substantively similar. Should the same type of disclosure for reverse repurchases be provided? Should the returns and costs of securities lending and repurchases be aggregated, rather than disclosed separately?** | securities lending and repurchases should be disclosed separately, as they represent different activities and are not substantially similar.<br><br>A few of these commenters told us that the fee arrangements for securities lending and repurchases are different, as are the underlying drivers for these activities. According to these commenters, securities lending is an ancillary activity designed to provide incremental returns and generate additional income for an investment fund, and is not a primary component of achieving a fund's investment objective. Further, securities lending arrangements are typically managed by an agent and are subject to an additional fee. On the other hand, reverse repurchase transactions are normally managed by the fund's portfolio manager without an incremental fee, as the management of these activities forms part of the portfolio manager's investment management services and is covered by the management fee.<br><br>As an example of reverse repurchases forming part of an investment fund's investment strategy, one commenter noted that reverse repurchases are employed to generate a cash-like return similar to commercial paper issued by the same counterparty. | lending and repurchases by investment funds be aggregated, given that they are different activities with different underlying drivers. New subsections 3.8(4) and (5) of NI 81-106 only apply to securities lending by investment funds. |
| **5. In order to provide investors with transparency on the profitability and scope of an** | One commenter felt that disclosure of the average daily aggregate dollar value of securities lent (average on-loan) and the maximum amount of securities lent expressed in dollars (maximum on-loan) could be misleading or confusing for investors. Given the potentially wide range of underlying fund sizes that | After reviewing the comments received, the CSA are not introducing any of these additional disclosure requirements at this time. However, we will continue to monitor securities lending, repurchases and reverse repurchases by investment funds, as well as international developments in this area, and may |

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| **investment fund's securities lending and repurchase activities, the CSA are considering requiring certain additional disclosure, in the investment fund's management reports of fund performance regarding such activities.**<br><br>**Do you agree that these disclosure items are useful in increasing transparency regarding the profitability and scope of a fund's securities lending and repurchases? Are any of these items less useful to investors, in light of the costs to the investment fund of calculating and** | engage in securities lending, this commenter felt that the most meaningful disclosure would be the average and maximum on-loan as a percentage of NAV.<br><br>Some commenters were of the view that, while the proposed disclosure measures would provide investors with a significant amount of data about securities lending, this information may not be useful to investors. Reasons that were provided include the following:<br><br>• the information regarding securities lending would be more extensive than the information investors receive about the primary investment strategies of a fund, which could divert their focus from the latter even though that information is far more material;<br><br>• securities lending revenue is driven by market demands and corporate events, which may vary significantly year to year, and which make comparisons of securities lending data between funds or over a period of time impossible; and<br><br>• the information would likely be confusing to investors and would require substantial costs to be borne by the fund.<br><br>Some commenters emphasized the importance of a balanced and proportionate disclosure framework and thought that it is important to consider the benefits provided by disclosure as well as the administrative and compliance costs of providing the disclosure. These commenters told us that the revenues generated | introduce new quantitative disclosure items in the future. |

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| **disclosing them?** | from securities lending may not justify the cost of collecting and disclosing such information.<br><br>One commenter supported additional disclosure with regard to securities lending, but was less convinced of the benefits of such disclosure for repurchases.<br><br>One commenter supported the CSA's effort to enhance investors' understanding of the benefits, costs and risks of securities lending, repurchases and reverse repurchases by investment funds, but believed that current disclosure requirements are sufficient. This commenter felt that requiring more granular financial disclosure or publicly disclosing the contractual arrangements with respect to these activities would not provide further clarity to investors regarding securities lending, repurchases and reverse repurchases.<br><br>Another commenter noted that this is especially the case for mutual funds, since they do not generally use repurchase and reverse repurchase strategies and securities lending is not a significant investment strategy. | |
| **6. Are there any other measurements regarding securities lending, repurchases or reverse repurchases that would provide** | A few commenters told us that, given the revenue generated from securities lending, repurchases and reverse repurchases is immaterial to an investment fund and its investment strategies, and would not influence an investor's investment decision to buy or hold securities of a fund, no measurements of securities lending other than those currently required would provide useful information to investors. | After reviewing the comments received, we are not introducing any additional quantitative disclosure requirements at this time other than the requirements in subsections 3.8(4) and (5) of NI 81-106. The CSA are introducing certain qualitative disclosure requirements, which are discussed in the comments and responses to question 7 below. |

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| **useful information to investors in addition to, or in lieu of, the items described in question 5?** | Certain commenters submitted that qualitative disclosure, such as disclosure regarding the risks and returns of securities lending in the fund's prospectus or annual information form, including the relevant protections and remedies available to the investment fund under the lending agreement, may enhance investor understanding of securities lending activities and their associated risks. One such commenter noted that this was consistent with what the European Securities and Markets Authority (ESMA) is proposing. | The CSA continue to believe that clear and detailed disclosure regarding an investment fund's securities lending, repurchase and reverse repurchase activities is important for investors. Accordingly, we will continue to monitor domestic and international developments regarding the regulation of these activities and may introduce new requirements in the future. |
| | One commenter submitted that the focus of disclosure should be on potential conflicts of interest, which are adequately addressed under existing disclosure requirements. | The CSA agree that disclosure of potential conflicts of interest is crucial. The new disclosure requirements regarding the identity of an investment fund's securities lending agents in the fund's prospectus and annual information form (AIF), as well as the amount of the securities lending revenue received by the lending agent in the fund's financial statements, are intended to provide information about the potential conflicts of interest that may arise in the context of an investment fund's securities lending activities. See Item 10.9.1 of Form 81-101F2, Item 19.11 of Form 41-101F2 and subsections 3.8(4) and (5) of NI 81-106. |
| | Another commenter felt that disclosure regarding the quality and amount of collateral held against a securities lending transaction would be helpful for investors. Otherwise, it may appear that an investment fund's lending balances represent exposure to the counterparties even though the exposure is over-collateralized. This commenter suggested requiring disclosure of corresponding levels of collateral held | The CSA note that subsection 3.8(2) of NI 81-106 already requires disclosure in an investment fund's financial statements about the type and amount of collateral received by the investment fund under its securities lending transactions that are outstanding as at the date of the financial statements. At this time, the CSA do not think that the benefits of requiring additional disclosure regarding collateral would |

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| | against securities loaned or of the net exposure or risk-adjusted exposure.<br><br>One commenter told us that it would support additional disclosure requirements to ensure that investors are properly informed of the non-redeemable investment fund's intention to engage in securities lending, repurchases and reverse repurchases and the associated risks. According to this commenter, the ability to engage in securities lending, repurchases and reverse repurchases should be determined in light of a non-redeemable investment fund's investment objectives and strategies and properly disclosed in the prospectus.<br><br>Similarly, one commenter noted that, if additional disclosure regarding securities lending, repurchases and reverse repurchases is required, alternate measures in lieu of those proposed by the CSA should be required. However, this commenter could not identify any circumstances where the costs of such disclosure would outweigh the benefits. | outweigh the costs of providing such disclosure.<br><br>The CSA agree that an investment fund's ability to engage in securities lending, repurchases and reverse repurchases should be determined by the fund's investment objectives and investment strategies, and must be properly disclosed in the investment fund's prospectus in accordance with the applicable Form requirements.<br><br>See responses above. |
| **7. The CSA are considering adding the agent in respect of securities lending, repurchases and, if applicable, reverse repurchases to the list of service providers** | A few commenters were of the view that it is important for investors to know the identity of the major service providers an investment fund uses, the amounts such service providers are paid and whether they are affiliates of the investment fund. However, these commenters did not believe this requirement should apply to repurchases or reverse repurchases, as such activities are generally managed by the investment fund's portfolio manager under the fund's investment management agreement. | The CSA are introducing requirements for investment funds to disclose the identity of the investment fund's securities lending agent in the investment fund prospectus and AIF. See new Items 19.11 of Form 41-101F2 and 10.9.1 of Form 81-101F2. |

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| **required to be disclosed in an investment fund's prospectus or AIF, as applicable. Another outcome of disclosing the agent would be that the agent's relationship to the manager would also be disclosed in the prospectus or AIF, so that investors can assess whether amounts are being paid to entities affiliated with the manager in connection with the investment fund's securities lending, repurchase or reverse repurchase activities.**<br><br>**Is this disclosure useful? Should any additional** | One commenter noted that, if securities lending activities conducted by an investment fund's securities lending agent are material in relation to the other activities of the investment fund, information about that agent should be disclosed on a basis consistent with the disclosure regarding the transfer agent of the fund.<br><br>On the other hand, one commenter was of the view that new disclosure would not be useful given the immaterial nature of the revenue generated by securities lending and the commensurate level of potential risk exposure. However, this commenter suggested that disclosing the credit rating of the securities lending agent may provide additional insight to investors.<br><br>A few commenters noted that NI 81-102 prescribes that an investment fund's securities lending agent must be the fund's custodian, and this information is currently disclosed in continuous disclosure documents. According to one of these commenters, any related party disclosure that is relevant is already available in an investment fund's financial statement disclosure.<br><br>One commenter expressed that disclosure of any | While the revenue received from securities lending may be immaterial to an investment fund, there may be conflicts of interest arising from an affiliate of the manager acting as the securities lending agent of the investment fund and receiving part of the securities lending revenue. Accordingly, the CSA are of the view that the identity of the securities lending agent is relevant for securityholders of an investment fund and should be disclosed.<br><br>As subsection 2.15(3) of NI 81-102 requires the securities lending agent of an investment fund to be either the custodian or sub-custodian of the investment fund, concerns regarding the creditworthiness of the securities lending agent are mitigated by the capitalization and other requirements applicable to custodians and sub-custodians under Part 6 of NI 81-102. Therefore, the CSA have not introduced a requirement to disclose the credit rating of an investment fund's securities lending agent.<br><br>While NI 81-102 does require that the securities lending agent of an investment fund be the custodian or sub-custodian of the investment fund, a securityholder may not know which of the investment fund's custodian or sub-custodians is acting as securities lending agent. Therefore, the CSA are of the view that mandating disclosure of the securities lending agent is an important facet of increasing the transparency of any potential conflicts of interests that exist in respect of an investor's investment in an investment fund.<br><br>The CSA think that the new disclosure required by |

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| **details regarding the agent be provided in an investment fund's prospectus or AIF?** | conflict of interest with an affiliated or non-arm's-length lending agent must be clear and also address how the conflict is being appropriately managed so as to not disadvantage the investment fund. | Items 19.11 of Form 41-101F2 and 10.9.1 of Form 81-101F2 will clearly indicate whether the securities lending agent is related to the manager of the investment fund. In the future, the CSA may consider the usefulness of additional disclosure regarding how any potential conflict of interest between the lending agent and the investment fund is being addressed. |
| **8. We understand that investment funds may seek different indemnities from their lending agent, which provide varying degrees of protection from losses that could arise from securities lending. Would disclosure of the indemnities obtained by an investment fund from its lending agent in the AIF or prospectus of the investment fund be useful for investors in assessing the risks from securities** | Some commenters were of the view that disclosure of indemnification arrangements in favour of investment funds is valuable for investors in assessing the risks of the securities lending activities.<br><br>One such commenter noted that extensive securities lending makes simple investment products into complex products due to the complex lending operations, highly diverse conditions under which the lending takes place and the significant liquidity and counterparty risks associated with the lending. Therefore, it was submitted that disclosure of indemnities would be a necessary first step. This commenter also suggested that the CSA consider whether a certain amount of indemnification should be required.<br><br>One commenter noted that the final form of indemnity provided in favour of an investment fund varies from arrangement to arrangement and may have numerous carve-outs or conditions. We were told that disclosure of indemnities would be cumbersome and complex and would not enable meaningful comparisons to be made | The CSA agree that disclosure of indemnities received by an investment fund from its lending agent is important and useful for investors, and are introducing a requirement to provide such disclosure. See new Items 19.11 of Form 41-101F2 and 10.9.1 of Form 81-101F2.<br><br>The CSA are not requiring minimum indemnities at this time, given that NI 81-102 currently requires that the market value of the collateral delivered to an investment fund in connection with a securities lending transaction be at least 102% of the market value of the loaned securities (i.e., the investment fund's securities lending exposure must be overcollateralized).<br><br>While the particular indemnity provided in favour of one investment fund may differ from an indemnity granted to another fund, the CSA do not consider this different from any other arrangement between an investment fund and its service providers, which arrangement may vary from fund to fund. Similar to the |

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| **lending?** | by an investor. | required disclosure of the essential terms of contractual arrangements between investment funds and certain service providers, the requirement in Items 19.11(3) of Form 41-101F2 and 10.9.1(3) of Form 81-101F2 is to provide a brief description**.** |
| | A few commenters submitted that, as a result of the requirement in NI 81-102, that an investment fund adjust daily the amount of collateral it holds to ensure that the market value is at least 102% of the value of the loaned securities, borrower indemnification provisions would not materially affect the risks associated with the securities lending. | Although the securities lending exposure of an investment fund under NI 81-102 must be overcollateralized, the CSA think that disclosure regarding the indemnities provided to an investment fund by the securities lending agent may still be relevant. In particular, disclosure of indemnification arrangements may highlight the potential risks or conflicts of interests where the agent is not arm's-length to the manager; for example, the manager in such circumstances may have an interest in the securities lending agent either not providing an indemnity, or providing a very narrow one. |
| | Other commenters were of the view that, if in particular circumstances indemnification is deemed to be material, then additional information may be provided in response to existing form requirements such as the risk disclosure required by Item 12 of Form 41-101F2 or Item 12(2) of Form 81-101F2. | The CSA agree that risk factor disclosure is important, and all material risks should be disclosed by an investment fund in its prospectus or AIF, as applicable. The CSA also think, however, that specific disclosure regarding any indemnity provided to the investment fund by the securities lending agent should be provided. |
| | One commenter added that it would be disproportionate to require disclosure in respect of one particular indemnity arrangement when an investment fund has many others. | While disclosure of other indemnities provided to an investment fund may also be beneficial, this phase of the Modernization Project has focused on securities lending, repurchases and reverse repurchases by investment funds and, therefore, we have considered in particular the relevance of the indemnities provided by |

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| | | securities lending agents. In the future, the CSA may consider whether disclosure of other indemnities provided to investment funds would be useful as well. |
| **9. Generally, investment funds do not file the agreements that they enter into with their lending agent on SEDAR. Currently, these agreements are not listed in the AIF under Item 16 of Form 81-101F2 or the prospectus under Item 31 of Form 41-101F2. Should these agreements be required to be included as material contracts and filed on SEDAR?** | Some commenters submitted that securities lending does not generate material revenue or is generally not fundamental to the investment objectives of a fund, and therefore, agreements entered into between investment funds and their lending agent are not material contracts and should not be required to be filed on SEDAR.<br><br>On the other hand, one commenter was of the view that securities lending agreements should be required to be disclosed and filed on SEDAR. This commenter noted that it already considers them to be material under the facts-based test for determining materiality of an agreement.<br><br>Other commenters were of the view that the current requirements relating to the filing and disclosure of material contracts is an adequate test for capturing contracts that are not otherwise specified in Form 81-101F2. According to these commenters, it is appropriate for the investment fund manager to determine whether or not a securities lending agreement constitutes a material contract of the investment fund and, accordingly, whether it should be listed in a fund's prospectus or annual information form.<br><br>A few commenters cautioned that the contents of a securities lending agreement are already mandated by NI 81-102 and the non-mandated terms, such as | After reviewing the comments received, the CSA are not introducing any requirements with respect to the filing of securities lending agreements. However, we note that, while there is no particular requirement that an investment fund file its securities lending agreement on SEDAR, an investment fund may still be required to file its securities lending agreements if they are material to the investment fund.<br><br>Therefore, managers should be aware of the applicable rules regarding the filing of material contracts by investment funds, and make a determination regarding whether the securities lending agreement between an investment fund and its securities lending agents should be publicly disclosed on SEDAR. |

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| | negotiated revenue sharing arrangements, are generally confidential and of a competitive and proprietary nature. | |
| **Other general comments** | Commenters generally agreed that information regarding the returns, costs and risks of an investment fund's securities lending, repurchase and reverse repurchase activities may be important and relevant to the investment fund's securityholders. However, commenters disagreed on whether additional disclosure regarding such activities, beyond what is currently required, is necessary or beneficial to investors, or whether the benefits of such additional disclosure would outweigh the potential disadvantages and costs. | As detailed above, the Securities Lending Disclosure Requirements introduced by the CSA at this time include a limited number of disclosure items that we consider to be particularly important and relevant to investors. We will continue to monitor international developments and consider whether additional requirements are necessary. |
| | Some commenters expressed concern that the Securities Lending Disclosure Proposals would obscure important and relevant facts regarding an investment fund with over-disclosure of less relevant information. These commenters felt that the Securities Lending Disclosure Proposals place undue emphasis on securities lending, repurchases and reverse repurchases by investment funds, given that these activities could affect only a small portion of a fund's assets and overall investment activities, and may mislead investors into thinking that such activities play a more important role in the management of the fund than they actually do. | The CSA believe that the Securities Lending Disclosure Requirements strike the appropriate balance between the need for meaningful disclosure regarding the costs, benefits and risks of an investment fund's securities lending and the desire to avoid over-disclosure of less relevant facts. We think these requirements will ensure that the most material facts, such as the revenue sharing arrangement between the investment fund and its securities lending agent and the identity of the securities lending agent, will be disclosed. |
| | Certain other commenters were of the view that the CSA should have sought information from managers as to the nature and extent of securities lending, repurchases and reverse repurchases by investment | See responses above. While the CSA are aware that some managers do not consider the revenue generated by securities lending, repurchases and reverse repurchases to be material to their investment funds, |

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| | funds, and the materiality of such activities, before proposing additional disclosure requirements.<br><br>While one commenter felt that conflicts of interest may arise in the context of a fund's securities lending activities, especially where a fund manager is administering the securities lending, this commenter felt that stakeholders should be consulted before new requirements come into force.<br><br>One commenter emphasized that retail investors are not in the best position to scrutinize how the securities lending program of a fund is structured and accounted for. According to this commenter, the investment fund governance rules should be reformed so as to require investment funds to have an independent board of directors, rather than the current independent review committee model, as the board would be in a position to put the portfolio managers to task and ask the hard questions.<br><br>Commenters also addressed the revenue-sharing arrangements between an investment fund and its securities lending agent.<br><br>A few commenters noted that securities lending agents provide many services to investment funds, such as research, analytics and trading tools, which, given the over-the-counter nature of the securities lending market, can have an appreciable effect on lending revenues. These commenters also submitted that many lending agents currently provide a lot of transparency to managers regarding the costs, risks and benefits of | we are of the view that certain disclosure regarding these activities is important for investors.<br><br>The Securities Lending Disclosure Requirements were formulated based on the extensive feedback received from stakeholders in response to the detailed questions asked in Annex C of the Request for Comments.<br><br>The CSA believe it is important that investors have access to certain disclosure about the securities lending activities engaged in by the funds in which they invest. A review of the independent review committee model under NI 81-107 is not within the scope of the Modernization Project.<br><br>The CSA do not currently have issues with the types of services provided by securities lending agents to investment funds, or the practice of sharing the securities lending revenue between the investment fund and its securities lending agent. The purpose of the Securities Lending Disclosure Requirements is to provide greater transparency through disclosure of the costs and returns related to the securities lending arrangements entered into by investment funds as well as any potential conflicts of interest between investment funds and their securities lending agents. |

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| | securities lending and repurchase activities as well as reporting beyond what is required by the regulations. As the costs of these services are generally borne by the securities lending agent, the revenue-sharing arrangements compensate agents for these costs while aligning their incentives with those of the fund in ensuring that lending activity is profitable.<br><br>One commenter was of the view that a vast majority of Canadians who own investment funds are unaware that the securities held by their funds are being loaned out, let alone what the amount of revenue is going to the fund versus the lending agent or portfolio manager. This commenter felt that the current system, where the fund managers take a portion of lending fees while the securityholders are responsible for the losses, risks and rewards, is not a fair system and does not mitigate potential systemic risks. This commenter saw the present practice as a breach of the fund manager's fiduciary duties to the fund and should not be permitted to continue on this principled basis. | No change at this time. The CSA believe that securities lending by investment funds should be permitted subject to the requirements in NI 81-102. We are also introducing the Securities Lending Disclosure Requirements. |

| **Part IV - Other comments** | | |
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| **Issue** | **Comments** | **Responses** |
| **Annual redemptions of securities based on NAV** | On the question of whether the CSA should reconsider its present view that investment funds that permit redemptions of their securities only once a year based on NAV be considered non-redeemable investment funds, one commenter thought that the CSA should | After considering the comments received, the CSA have decided not to revisit our current view. The CSA recognize that many non-redeemable investment funds have been structured based on the long standing interpretation that securities that may be redeemed no |

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| | revisit this view. This commenter suggested that new non-redeemable investment funds not be permitted to offer any redemptions at NAV.<br><br>However, the majority of commenters were of the view that the current distinction between "mutual fund" and "non-redeemable investment fund" be maintained, such that an investment fund that offers redemptions no more than once a year continue to be considered a non-redeemable investment fund. Several commenters were of the view that changing this interpretation would create unnecessary confusion for investors and advisors, who assume that all mutual funds have daily liquidity at NAV. In particular, some commenters thought the definition of "mutual fund" does not capture investment funds with an annual redemption feature, since annual redemptions may not constitute redemptions "on demand". | more frequently than once a year are not redeemable "on demand". Accordingly, the Amendments contemplate that a non-redeemable investment fund may offer an annual redemption of its securities with reference to the NAV of those securities.<br><br>The CSA note that an annual redemption feature is commonplace among non-redeemable investment funds which publicly offer securities in Canada and we recognize that any benefit to changing our interpretation at this time would be outweighed by the confusion to the marketplace. |
| | Several commenters urged us to provide greater certainty by articulating the distinction between "mutual fund" and "non-redeemable investment fund" in NI 81-102. | No change. The definitions of "mutual fund" or "non-redeemable investment fund" are contained in the respective *Securities Act* of each CSA jurisdiction, and not in NI 81-102. |
| | One commenter noted that the occasional redemption right offered by non-redeemable investment funds is not a fundamental component of such products, and the panoply of regulation aimed at protecting the redemption rights of mutual funds in NI 81-102 would not be properly applied to non-redeemable investment funds.<br><br>Another commenter noted that having different | See responses above. The Amendments impose slightly different requirements on non-redeemable investment funds as compared to mutual funds. The CSA consider the different treatment of mutual funds and non-redeemable investment funds in NI 81-102 to appropriately capture their key distinctive features. In particular, the CSA have not at this time imposed many of the investment restrictions applicable to mutual funds on non-redeemable investment funds. As |

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| | regulatory frameworks would be consistent with the regulation of non-redeemable investment funds and mutual funds in other jurisdictions.<br><br>Several commenters reiterated that non-redeemable investment funds are formed and distributed in fundamentally different ways than conventional mutual funds. These commenters emphasized the importance of continuing to provide non-redeemable investment funds with the flexibility to use diverse investment strategies, which is justified by less frequent redemptions. One commenter expressed that regulating non-redeemable investment funds like mutual funds would essentially eliminate investor choice and cause investors to seek such products in jurisdictions outside Canada.<br><br>Several commenters were also concerned that reclassifying non-redeemable investment funds with an annual redemption feature as mutual funds would cause non-redeemable investment funds to remove their annual redemption feature. One commenter noted that an annual redemption feature has been a common feature throughout the history of non-redeemable investments funds, and, at least 90% of non-redeemable investment funds currently listed on the TSX have this feature.<br><br>Some commenters submitted that annual redemptions at NAV serve the following important purposes for non-redeemable investment funds and should be preserved: they permit investors to redeem at NAV where the fund's securities are trading at a lower price; | discussed in this Annex B, the CSA are continuing to consider whether further investment restrictions should apply to non-redeemable investment funds to be published in conjunction with the Alternative Funds Proposals. The CSA will continue to consider, among other things, whether and the extent to which the frequency of redemption offered by an investment fund supports different investment restrictions.<br><br>The CSA are of the view that, while non-redeemable investment funds will be subject to core operational requirements and certain investment restrictions that are equally applicable to all publicly offered investment funds, non-redeemable investment funds should continue to have sufficient flexibility to use a range of investment strategies.<br><br>As the CSA are not changing our view with respect to treating investment funds that offer an annual redemption feature as non-redeemable investment funds, non-redeemable investment funds may continue to provide annual redemptions of their securities without being considered mutual funds.<br><br>The CSA were not proposing to eliminate the annual redemption feature for non-redeemable investment funds. The purpose of our question was to examine whether the frequency of redemption alone supports the distinction between a "mutual fund" and a "non- |

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| | they permit investors to liquidate a large holding if the fund's securities are thinly traded (which also permits a large redemption to be effected without a significant effect on the market price); and, they support the trading price of the fund's securities to ensure that the securities trade closer to NAV. We were also told that some non-redeemable investment funds provide an annual redemption right because it ensures the fund maintains its status as a "mutual fund trust" for purposes of the *Income Tax Act*. | redeemable investment fund" and their different regulatory frameworks. As noted above, after reviewing the comments received, we have not changed our view on this question. |
| | One commenter noted that the removal of any redemption feature at NAV would particularly impact unlisted non-redeemable investment funds where annual redemptions at NAV provide the only liquidity option for investors. | See responses above. |
| | Some commenters pointed out that the securities of non-redeemable investment funds in the United States, which do not have annual redemption features, trade at much lower prices relative to their NAV than the securities of Canadian non-redeemable investment funds. We were told that a significant negative impact on the trading price of non-redeemable investment fund securities would harm investors, since their primary means of gaining liquidity is through trading on an exchange. | The question of whether an investment fund whose securities entitle the holder to request that the fund redeem those securities at least once a year is a non-redeemable investment fund is a matter of legal interpretation and, in our view, is not impacted by the practical consideration of whether annual redemption features cause an investment fund's securities to trade at a price closer to their NAV relative to the securities of investment funds that do not have any redemption feature. |
| **Transitioning and grandfathering of existing funds** | With respect to the Investment Restriction Proposals, many commenters preferred grandfathering existing funds rather than a transition period. | After reviewing the comments received, the CSA have decided to grandfather certain non-redeemable investment funds in respect of the non-guaranteed mortgage restriction. See new subsection 20.4(2) of NI 81-102. |

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| | | Certain of the other Amendments will have transition periods ranging between six and 18 months. See "Transition Periods and Grandfathering" in the Notice. At the time that any additional proposed investment restrictions for non-redeemable investment funds are published for comment, the CSA will consider whether grandfathering in respect of those provisions would be appropriate. |
| | One commenter noted that the Proposed Amendments represent material changes, which could never have been anticipated, and many commenters expressed concern that making currently existing non-redeemable investment funds comply with the Proposed Amendments is inconsistent with the investment decision made by investors, their legitimate expectations and the commercial decision made by the manager in launching the fund. These commenters emphasized that managers have created and marketed their non-redeemable investment funds, and investors have purchased these funds, on the basis of their current structure, and this commercial bargain between the funds and their investors should be honoured.<br><br>In particular, certain commenters were of the view that the bargain made by investors when investing in a non-redeemable investment fund was based on the current non-redeemable investment fund regime and upon fundamental terms set out in the non-redeemable investment fund's prospectus, which include the investment strategies and restrictions of the fund. These commenters questioned how requiring non-redeemable | Unlike the Proposed Amendments, which proposed to impose restrictions on the use of leverage, short selling and derivatives by non-redeemable investment funds, the CSA expect the Amendments to have a very limited impact on the investment strategies of non-redeemable investment funds. Accordingly, the CSA do not believe any of the Amendments, other than the non-guaranteed mortgage restriction, materially affect the commercial bargain between non-redeemable investment funds and their investors. As stated above, grandfathering is being provided in respect of the non-guaranteed mortgage restriction.<br><br>The CSA are of the view that many of the Amendments provide basic investor protections that the majority of non-redeemable investment funds already adopt. |

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| | investment funds that are using an investment strategy disclosed in their prospectus to retroactively comply with new regulations is in the best interest of investors or consistent with the investor protection objectives of securities law. As a result, these commenters considered it unfair for the rules to be changed such that an existing non-redeemable investment fund's investment strategy could no longer be implemented and submitted that, at a minimum, these funds be grandfathered with respect to the Investment Restriction Proposals. | |
| | One commenter added that requiring fundamental changes to a non-redeemable investment fund's investment strategies could compromise the ability of the non-redeemable investment fund to report historical performance. | See responses above. |
| | Some commenters expressed concern that the Proposed Amendments would have an extremely negative impact on the industry and the integrity of the prospectus, and that, even with transitioning, the Proposed Amendments are effectively retroactive rules. One such commenter referred to a standard tax policy principle stating that retroactive change that is not in the taxpayer's favour should be avoided or, at worst, only be used in exceptional circumstances. While this commenter believed tax and securities rules are different, it was submitted that the same principle of avoiding retroactivity should apply in the case of the Proposed Amendments. | In the CSA's view, the Amendments are not retroactive, as they do not apply to activities that occurred prior to the Amendments coming into force. The Amendments only apply to activities by non-redeemable investment funds which occur after the coming into force of the Amendments. |
| | Several commenters submitted that a transition period | See responses above. The CSA expect that generally, |

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| | is not appropriate because the costs and disruption associated with transitioning an entire fund family to comply with the Proposed Amendments would be significant for non-redeemable investment fund managers and investors. In particular, it was submitted that the costs and logistics of amending the constating documents of the fund, obtaining required securityholder approvals, and the associated notice and continuous disclosure requirements would be untenable. These commenters also felt that it would not be fair for securityholders or fund managers to bear the costs associated with implementing these changes, particularly since the non-redeemable investment funds were originally launched, marketed and managed in compliance with the existing regulatory regime. | the Amendments will not require significant changes to a non-redeemable investment fund's investment strategies or constating documents and, as a result, will not impose significant costs on non-redeemable investment funds. To the extent that non-redeemable investment funds must make changes to certain aspects of their operations (e.g., their securities lending agreements or sales communications), transition periods have been provided. |
| | A few commenters told us that, absent grandfathering, the only alternative to changing the constating documents of a non-redeemable investment fund would be for the fund to wind up, fit into the alternative funds framework or convert to a non-investment fund issuer. | See responses above. The CSA do not think the Amendments will require non-redeemable investment funds to change their constating documents or wind up. |
| | One commenter conveyed that a grandfathering provision is warranted, but discretion should remain for managers to transition their non-redeemable investment funds into the new framework if they choose to accept the new restrictions. On the other hand, another commenter was of the view that existing funds should be grandfathered on an "all or none" basis, meaning that they should not be permitted to choose to comply with some of the Proposed Amendments and not others. | See responses above. |

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| | Some commenters felt that the lack of clear permanent grandfathering, which would require non-redeemable investment funds to change their investment strategies, restrictions and operations, is not appropriate and will lead to confusion and market inefficiency. One such commenter was of the view that such a state of affairs would be directly contrary to fair and efficient capital markets and would harm confidence in the Canadian marketplace. | See responses above. |
| | A few commenters were also of the view that, in the interests of market efficiency and transparency, the CSA's intention with respect to grandfathering should be communicated to the market as soon as practically possible. According to these commenters, grandfathered funds should be permitted to continue to conduct their business, operations and affairs in all respects in compliance with their constating or governing documents and on the basis previously approved by the CSA. | As described above, other than with respect to the non-guaranteed mortgage restriction, the CSA do not think grandfathering is required with respect to any of the Amendments. The CSA will consider grandfathering with respect to any additional investment restrictions proposed in the future. |
| | A few commenters felt that, even if grandfathering of existing non-redeemable investment funds were not granted, the transition period proposed in the Request for Comments is not sufficient, given the changes that will need to be made in order to comply, including amendments to relevant constating documents and material agreements, as well as obtaining securityholder approval and investment reallocation as well as other technical and procedural changes. One such commenter was of the view that the requirement to transition should not begin until a revised alternative funds regime is in place. | As described above, given that the Amendments largely focus on introducing fundamental protections for securityholders of non-redeemable investment funds, the CSA are of the view that they should not require non-redeemable investment funds to make significant amendments to their investment portfolio or to their constating documents, which would require securityholder approval. Where, in the CSA's view, non-redeemable investment funds may require a transition period to comply with a particular provision, appropriate transition periods have been provided. |

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| | A few commenters told us that a lack of grandfathering, which would cause currently existing non-redeemable investment funds to change their investment parameters, would negatively impact the future performance of these funds and may force some of them to liquidate assets, which would give rise to other complications and issues that may be more detrimental to securityholders than the perceived benefits that the Proposed Amendments are intended to provide. One such commenter thought that entire marketplaces surrounding the non-redeemable investment fund industry would be affected, potentially driving portfolio security values down and impacting non-redeemable investment fund investors. | See responses above. |
| | One commenter felt that forcing existing non-redeemable investment funds to sell their investments in a responsible manner that ensures the preservation of NAV would be a time-consuming process. Accordingly, this commenter requested that existing investments that do not comply with sections 2.2, 2.3 and 2.5 of NI 81-102 be allowed to mature or, where the investment does not have a maturity date, be allowed to be held for up to five years, ensuring that existing investors are not penalized as a result of the proposed amendments. | The CSA are providing 18-month transition periods for the Amendments relating to sections 2.2, 2.3 and 2.5 of NI 81-102 (other than with respect to paragraph 2.3(2)(b), where certain existing funds are being grandfathered). We are of the view that this transition period provides adequate time for a non-redeemable investment fund to dispose of investments which contravene these provisions. We disagree that sections 2.2, 2.3 and 2.5, as amended by the Amendments, would require a five year transition period. |
| | Some commenters submitted that investors who wish to move to non-redeemable investment funds governed by NI 81-102, as amended by the Proposed Amendments, and any alternative funds regime, may sell or redeem their grandfathered funds and purchase | When the CSA consider the Alternative Funds Proposals further, we will also consider and publish for comment any transitioning provisions for non-redeemable investment funds subject to NI 81-102 that wish to be subject to the alternative funds framework in |

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| | those new funds.<br><br>Some commenters also expressed a particular view with respect to grandfathering investment funds affected by the non-guaranteed mortgage restriction, and suggested that grandfathering the affected non-redeemable investment funds would be the preferable approach and in the best interest of existing securityholders.<br><br>One commenter noted that a transition period of 24 months for the non-guaranteed mortgage restriction would not be sufficient. According to this commenter, mortgage loans are contracts between a lender and a borrower and most loan terms would not include a right of demand for repayment and may have terms exceeding 24 months, and even up to 10 years. Therefore, transitioning out of non-guaranteed mortgages would force a fund to divest otherwise performing mortgages.<br><br>Some commenters noted that if the non-guaranteed mortgage restriction is adopted without grandfathering, mortgage investment entities that are currently structured as non-redeemable investment funds would have to conform their investment objectives to the non-guaranteed mortgage restriction or, in the alternative, they would be forced to wind up or convert to non-investment fund issuers. One commenter noted that causing MIEs to convert to non-investment fund issuers would require them to change their continuous disclosure mid-stream, which this commenter felt was inappropriate. | NI 81-104.<br><br>As noted above, the CSA are grandfathering certain existing non-redeemable investment funds from the non-guaranteed mortgage restriction. However, the CSA continue to have concerns regarding whether an issuer that invests all or substantially all of its assets in non-guaranteed mortgages is an investment fund. Therefore, if an issuer relies on new subsection 20.4(2) of NI 81-102 to invest in non-guaranteed mortgages and seeks to raise additional capital in the public markets, staff from the applicable CSA jurisdictions will closely review the issuer's prospectus with a view to determining whether the issuer is an investment fund, or whether it is a non-investment fund issuer that should comply instead with the securities regulatory regime applicable to such issuers.<br><br>See response above. |

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| **Cost benefit analysis** | Many commenters submitted that the direct and indirect costs of the Proposed Amendments materially outweigh the benefits for investors and issuers, and that the Proposed Amendments would impose a significant financial hardship on managers.<br><br>Costs that were identified by commenters include:<br><br>• increased costs to investors as a result of the proposed restriction on organizational costs being borne by a non-redeemable investment fund, as management fees may simply be increased to recoup the organizational costs;<br><br>• significant costs to managers of non-redeemable investment funds as a result of the organizational cost proposals. We were told that these costs would create a barrier for managers to offer non-redeemable investment funds to the public, which would reduce competition and result in more limited investor choice with respect to unique investment products;<br><br>• a loss of value of investments in non-redeemable investment funds; and<br><br>• the cost of securityholder meetings to implement changes as a result of the Proposed Amendments.<br><br>A few commenters agreed that the imposition of core operational requirements would provide benefits because they promote the CSA's goal of investor | The CSA note that many of the costs of the Proposed Amendments identified by commenters relate to the Investment Restriction Proposals and Organizational Cost Proposals. As the CSA are only implementing a limited number of the Investment Restriction Proposals, and are not moving forward with the Organizational Cost Proposals at this time, we are of the view that the costs submitted by commenters to be burdensome to non-redeemable investment funds and their managers are not applicable to the Amendments.<br><br>Accordingly, we believe that the potential benefits of the Amendments outweigh their costs, as they impose core operational requirements on non-redeemable investment funds, which promote the CSA's goal of investor protection. We think the Amendments also provide for market efficiency, as they clearly indicate to managers of investment funds the types of activities and restrictions that the CSA consider inappropriate.<br><br>See responses above. |

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| | protection. However, these commenters submitted that it is not clear what benefits the Investment Restriction Proposals provide, as it is not clear what harm the CSA are trying to rectify in imposing investment restrictions. | |
| | Another commenter added that the CSA have consistently taken the view that the costs of regulation should not outweigh the expected benefits. | The CSA agree that the costs of regulation should not outweigh the expected benefits and, as discussed above, we are of the view that the benefits of the Amendments outweigh their costs. |
| | A few commenters noted that no quantitative analysis of the costs or benefits of the Proposed Amendments was provided in the Request for Comments, and instead, the burden of providing a cost-benefit analysis has been shifted to the public. | See response above. The CSA consider that many of the benefits of the Amendments represent core operational requirements for non-redeemable investment funds and fundamental protections for securityholders. |
| | One commenter was of the view that the Proposed Amendments may lead investors to suspect problems with non-redeemable investment funds where none currently exist, which would be directly contrary to the CSA's mandate of supporting efficiency and building confidence in Canadian capital markets. This commenter also told us that further changes to our capital markets without a clear and present need will be confusing and will reduce, rather than add to, confidence in our capital markets. | The CSA disagree that introducing the Amendments will lead to investors suspecting problems with non-redeemable investment funds. On the contrary, we think that investors may feel greater confidence investing in non-redeemable investment funds on the basis that these funds are subject to similar core protections and operational requirements as those applicable to mutual funds. Moreover, managers of non-redeemable investment funds will have greater clarity and certainty on the types of activities that are permissible, prior to structuring their non-redeemable investment fund offerings and filing a prospectus, which we believe will increase market efficiency. |

**Part V – List of commenters**

## Commenters

- AGF Investments Inc.
- Alternative Investment Management Association (AIMA)
- Arrow Capital Management Inc.
- Artemis Investment Management Limited
- Aston Hill Capital Markets Inc.
- Blackheath Fund Management Inc.
- BlackRock Asset Management Canada Limited
- Blake, Cassels & Graydon LLP
- Borden Ladner Gervais LLP
- Brompton Funds Limited
- Canadian Advocacy Council for Canadian CFA Institute Societies, The
- Canadian Foundation for Advancement of Investor Rights (FAIR)
- Canadian Securities Institute, The (CSI)
- Canadian Securities Lending Association (CASLA)
- Canoe Financial LP
- CI Investments Inc.
- Cymbria Corp.
- Faircourt Asset Management Inc.
- Fasken Martineau DuMoulin LLP
- Fidelity Investments Canada ULC
- First Asset Investment Management Inc.
- Front Street Capital
- GD-1 Management Inc. and Global Digit II Management Inc.
- Harvest Portfolios Group Inc.

- IFSE Institute, The
- Investment Funds Institute of Canada, The (IFIC)
- Investment Industry Association of Canada, The (IIAC)
- Man Investments Canada Corp.
- Mark Brown
- McCarthy Tétrault LLP
- McMillan LLP
- Middlefield Group
- Morgan Meighen & Associates Limited
- Osler, Hoskin & Harcourt LLP
- Periscope Capital Inc.
- Private Mortgage Lenders Forum
- Propel Capital Corporation
- Quadravest Capital Management Inc.
- RBC Capital Markets
- RBC Global Asset Management Inc.
- ROI Capital
- Stikeman Elliott LLP
- Stikeman Elliott LLP (on behalf of 42 organizations)
- Stikeman Elliott LLP (on behalf of BMO Capital Markets, CIBC, National Bank Financial, RBC Capital Markets, Scotiabank and TD Securities)
- Strathbridge Asset Management Inc.
- TMX Group Limited
- Trez Capital Fund Management Limited Partnership
- W.A. Robinson Asset Management Ltd.
- Wildeboer Dellelce LLP

**Annex C**

**Schedule C-1**

**THE MANITOBA SECURITIES COMMISSION**
**MSC Rule No. 2014-2**
(Section 149.1, *The Securities Act*)

**AMENDMENTS TO**
**NATIONAL INSTRUMENT 81-102**
***MUTUAL FUNDS***

*1. National Instrument 81-102 Mutual Funds is amended by this Instrument.*

*2. The title is amended by replacing "Mutual Funds" with "Investment Funds".*

*3. Section 1.1 is amended*

*(a) in the definition of "***borrowing agent***" by replacing "*a mutual fund*" with "*an investment fund*" wherever it occurs,*

*(b) in the definition of "***clone fund***" by replacing "*a mutual fund*" with "*an investment fund*" and by replacing "*another mutual fund*" with "*another investment fund*",*

*(c) in the definition of "***currency cross hedge***" by replacing "*a mutual fund*" with "*an investment fund*" and by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs,*

*(d) by replacing the definition of "***custodian***" with the following:*

"**custodian**" means the institution appointed by an investment fund to hold portfolio assets of the investment fund;

*(e) by adding the following definition:*

"**dealer managed investment fund**" means an investment fund the portfolio adviser of which is a dealer manager;,

*(f) by repealing the definition of "***dealer managed mutual fund***",*

*(g) in the definition of "***designated rating***" by replacing "*mutual fund*" with "*investment fund*",*

*(h) in the definition of "***floating rate evidence of indebtedness***" by replacing paragraph (b) with the following:*

(b) the evidence of indebtedness was issued, or is fully and unconditionally guaranteed as to principal and interest, by any of the following:

(i) the government of Canada or the government of a jurisdiction of Canada;

(ii) the government of the United States of America, the government of one of the states of the United States of America, the government of another sovereign state or a permitted supranational agency, if, in each case, the evidence of indebtedness has a designated rating;

*(i) in the definition of "***fundamental investment objectives***" by replacing "*a mutual fund*" with "*an investment fund*", by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs, and by replacing "*other mutual funds*" with "*other investment funds*",*

*(j) by adding the following definitions:*

"**investment fund conflict of interest investment restrictions**" means the provisions of securities legislation that are referred to in Appendix D;

"**investment fund conflict of interest reporting requirements**" means the provisions of securities legislation that are referred to in Appendix E;

*(k) by replacing the definition of "***investor fees***" with the following:*

"**investor fees**" means, in connection with the purchase, conversion, holding, transfer or redemption of securities of an investment fund, all fees, charges and expenses that are or may become payable by a securityholder of the investment fund to,

(a) in the case of a mutual fund, a member of the organization of the mutual fund other than a member of the organization acting solely as a participating dealer, and

(b) in the case of a non-redeemable investment fund, the manager of the non-redeemable investment fund;

*(l) in the definition of "***long position***" by replacing "*a mutual fund*" with "*an investment fund*" and by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs,*

*(m) in the definition of "***management expense ratio***" by replacing "*a mutual fund*" with "*an investment fund*",*

*(n) by replacing the definition of "***manager***" with the following:*

"**manager**" means an investment fund manager;

*(o) by repealing the definitions of "***mutual fund conflict of interest investment restrictions***" and "***mutual fund conflict of interest reporting requirements***",*

*(p) in the following definitions by replacing "*a mutual fund*" with "*an investment fund*":*

*(i) "***non-resident sub-adviser***";*

*(ii) "***performance data***",*

*(q) in the definition of "***portfolio adviser***" by replacing "*mutual fund*" with "*investment fund*" wherever it occurs,*

*(r) in the definition of "***portfolio asset***" by replacing "*a mutual fund*" with "*an investment fund*",*

*(s) in the definition of "***purchase***" by replacing "*a mutual fund*" with "*an investment fund*" and by replacing "*the mutual fund*" with "*the investment fund*",*

*(t) by repealing the definition of "***redemption payment date***",*

*(u) in the definition of "***report to securityholders***" by replacing "*a mutual fund*" with "*an investment fund*",*

*(v) by replacing the definition of "***sales communication***" with the following:*

"**sales communication**" means a communication relating to, and by, an investment fund or asset allocation service, its promoter, manager, portfolio adviser, principal distributor, a participating dealer or a person or company providing services to any of them, that

(a) is made

(i) to a securityholder of the investment fund or participant in the asset allocation service, or

(ii) to a person or company that is not a securityholder of the investment fund or participant in the asset allocation service, to induce the purchase of securities of the investment fund or the use of the asset allocation service, and

(b) in the case of an investment fund, is not contained in any of the following documents of the investment fund:

1. A prospectus or preliminary or *pro forma* prospectus.

2. An annual information form or preliminary or *pro forma* annual information form.

3. A fund facts document or preliminary or *pro forma* fund facts document.

4. Financial statements, including the notes to the financial statements and the auditor's report on the financial statements.

5. A trade confirmation.

6. A statement of account.

7. Annual or interim management report of fund performance;

*(w) by adding the following definition:*

"**scholarship plan**" has the meaning ascribed to that term in section 1.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure*;

*(y) in the definition of "***short position***" by replacing "*a mutual fund*" with "*an investment fund*" and by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs,*

*(z) in the definition of "***specified dealer***" by replacing ",* or*" with ";",*

*(aa) in the definition of "***sub-custodian***" by replacing "*a mutual fund" *with "*an investment fund*" and by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs, and*

*(bb) in the definition of "***underlying market exposure***" by replacing "*a mutual fund*" with "*an investment fund*" and by replacing "*the mutual fund*" with "*the investment fund*".*

*4. (1) Section 1.2 is amended*

*(a) by renumbering it as subsection 1.2(1),*

*(b) by replacing "*; and*" with "," at the end of paragraph (a),*

*(c) by adding the following paragraph immediately after paragraph (a):*

(a.1) a non-redeemable investment fund that is a reporting issuer, and, *and*

*(d) in paragraph (b) by replacing "*a mutual fund*" with "*an investment fund*" and by replacing "*paragraph (a)*" with "*paragraphs (a) and (a.1)*".*

*(2) Section 1.2, as amended by subsection (1), is amended by adding the following subsections:*

**1.2(2)** Despite subsection (1), this Instrument does not apply to a scholarship plan.

**1.2(3)** Despite subsection (1), in Québec, in respect of investment funds organized under an Act to establish the *Fonds de solidarité des travailleurs du Québec (F.T.Q.)* (chapter F-3.2.1), an Act to establish *Fondaction, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi* (chapter F-3.1.2), or an Act constituting *Capital régional et coopératif Desjardins* (chapter C-6.1), the following requirements apply:

(a) sections 2.12 to 2.17;

(b) Part 6;

(c) Part 15, except for paragraph 15.8(2)(b);

(d) Part 19;

(e) Part 20.

**1.2(4)** For greater certainty, in British Columbia, if a provision of this Instrument conflicts or is inconsistent with a provision of the *Employee Investment Act* (British Columbia) or the *Small Business Venture Capital Act* (British Columbia), the provision of the Employee Investment Act or the Small Business Venture Capital Act, as the case may be, prevails.

*5. Section 1.3 is amended*

*(a) by replacing "*a mutual fund*" with "*an investment fund*",*

*(b) by replacing "*separate mutual fund*" with "*separate investment fund*", and*

*(c) by replacing "*A mutual fund*" with "*An investment fund*".*

*6. Section 2.1 is amended by replacing "shall" with "must" wherever it occurs.*

*7. Section 2.2 is amended*

*(a) by replacing subsection 2.2(1) with the following:*

**2.2(1)** An investment fund must not purchase a security of an issuer

(a) if, immediately after the purchase, the investment fund would hold securities representing more than 10% of

(i) the votes attaching to the outstanding voting securities of the issuer; or

(ii) the outstanding equity securities of the issuer; or

(b) for the purpose of exercising control over, or management of, the issuer.

*(b) by replacing "*a mutual fund*" with "*an investment fund*" wherever it occurs,*

*(c) by replacing* "the mutual fund*" with "*the investment fund*" wherever it occurs, and*

*(d) by replacing "*shall*" with "*must*" wherever it occurs.*

*8. (1) Section 2.3 is amended*

*(a) by renumbering it as subsection 2.3(1), and*

*(b) by replacing "*shall*" with "*must*".*

*(2) Section 2.3, as amended by subsection 2.3(1), is amended by adding the following subsection:*

**2.3(2)** A non-redeemable investment fund must not do any of the following:

(a) purchase real property;

(b) purchase a mortgage, other than a guaranteed mortgage;

(c) purchase an interest in a loan syndication, or loan participation, if the purchase would require the non-redeemable investment fund to assume any responsibilities in administering the loan in relation to the borrower.

*9. Section 2.4 is amended by replacing "*shall*" with "*must*" wherever it occurs.*

*10. The heading in section 2.5 is amended by replacing "*Mutual Funds*" with "*Investment Funds*".*

*11.(1) Subsection 2.5(1) is amended*

*(a) by replacing "*a mutual fund*" with "*an investment fund*",*

*(b) by replacing "*another mutual fund*" with "*another investment fund*", and*

*(c) by replacing "*other mutual fund*" with "*other investment fund*" wherever it occurs.*

*(2) Subsection 2.5(2) is amended*

*(a) by replacing "*A mutual fund shall*" with "*An investment fund must*",*

*(b) by replacing "*another mutual fund*" with "*another investment fund*",*

*(c) by replacing paragraph (a) with the following:*

(a) if the investment fund is a mutual fund, the other investment fund is a mutual fund that is subject to this Instrument and offers or has offered securities under a simplified prospectus in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure*,

(a.1) if the investment fund is a non-redeemable investment fund, one or both of the following apply:

(i) the other investment fund is subject to this Instrument;

(ii) the other investment fund complies with the provisions of this Instrument applicable to a non-redeemable investment fund,

*(d) in paragraph (b) by replacing "*other mutual fund*" with "*other investment fund*" and by replacing "*other mutual funds*" with "*other investment funds*",*

*(e) by replacing paragraph (c) with the following:*

(c) if the investment fund is a mutual fund, the investment fund and the other investment fund are reporting issuers in the local jurisdiction,

(c.1) if the investment fund is a non-redeemable investment fund, the other investment fund is a reporting issuer in a jurisdiction in which the investment fund is a reporting issuer, *and*

*(f) in paragraphs (d), (e) and (f) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs and by replacing "*other mutual fund*" with "*other investment fund*" wherever it occurs.*

*(3) Subsection 2.5(3) is amended*

*(a) by replacing "*Paragraphs (2)(a) and (c)*" with "*Paragraphs (2)(a), (a.1), (c) and (c.1)*",*

*(b) in paragraph (a) by replacing "*a mutual fund*" with "*an investment fund*", and*

*(c) in paragraph (b) by replacing "*mutual fund*" with "*investment fund*" wherever it occurs.*

*(4) Subsection 2.5(4) is amended*

*(a) by replacing "*other mutual fund*" with "*other investment fund*", and*

*(b) by replacing "*a mutual fund*" with "*an investment fund*".*

*(5) Subsection 2.5(5) is amended by replacing "*a mutual fund*" with "*an investment fund*".*

*(6) Subsection 2.5(6) is amended*

*(a) by replacing "*A mutual fund*" with "*An investment fund*",*

*(b) by replacing* "another mutual fund*" with "*another investment fund*",*

*(c) by replacing "*shall*" with "*must*",*

*(d) by replacing "*other mutual fund*" with "*other investment fund*", and*

*(e) by replacing "*the mutual fund*" with "*the investment fund*".*

*(7) Subsection 2.5(7) is amended*

*(a) by replacing "*The mutual fund*" with "*The investment fund*",*

*(b) by replacing "*the mutual fund*" with "*the investment fund*",*

*(c) by replacing "*a mutual fund*" with "*an investment fund*", and*

*(d) by replacing "*another mutual fund*" with "*another investment fund*".*

*12. Section 2.6 is amended*

*(a) by replacing "*A mutual fund shall not*" with "*An investment fund must not,*",*

*(b) in paragraph (a) by adding "*in the case of a mutual fund,*" before "*borrow*",*

*(c) in paragraph (b) by adding "*in the case of a mutual fund,*" before "*purchase*",*

*(d) in paragraph (c) by adding "*in the case of a mutual fund,*" before "*sell*", and*

*(e) in paragraph (d) by replacing "*mutual fund*" with "*investment fund*".*

*13. Section 2.7 is amended by replacing "*shall*" with "*must*" wherever it occurs.*

*14. Section 2.8 is amended by replacing "*shall*" with "*must*" wherever it occurs.*

*15. (1) Section 2.9 is amended by renumbering it as subsection 2.9(1).*

*(2) Section 2.9, as amended by subsection (1), is amended by adding the following subsection:*

**2.9(2)** Section 2.2 does not apply to the use of specified derivatives by a non-redeemable investment fund for hedging purposes.

*16. Section 2.10 is amended*

*(a) by replacing "*a mutual fund*" with "*an investment fund*" wherever it occurs,*

*(b) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs,*

*(c) by replacing "*shall*" with "*must*" wherever it occurs, and*

*(d) by replacing "*A mutual fund*" with "*An investment fund*" wherever it occurs.*

*17. The heading in section 2.11 is amended by replacing "*a Mutual Fund*" with "*an Investment Fund*".*

*18.(1) Subsection 2.11(1) is amended*

*(a) by replacing "*A mutual fund*" with "*An investment fund*",*

*(b) by replacing "*a mutual fund*" with "*an investment fund*",*

*(c) by replacing "*unless*" with ",* unless,*",*

*(d) by replacing paragraph (a) with the following:*

(a) in the case of a mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution, its prospectus contains the disclosure required for a mutual fund intending to engage in the activity;

(a.1) in the case of an exchange-traded mutual fund that is not in continuous distribution or of a non-redeemable investment fund, the investment fund issues a news release that contains both of the following:

(i) the disclosure required in a prospectus for an exchange-traded mutual fund that is not in continuous distribution, or a non-redeemable investment fund, intending to engage in the activity;

(ii) the date on which the activity is intended to begin; and, *and*

*(e) in paragraph (b) by replacing "*mutual fund*" with "*investment fund*", and by replacing "*required for mutual funds intending to engage in the activity*" with "*referred to in paragraph (a) or (a.1), as applicable*".*

*(2) Subsection 2.11(2) is amended by adding ",* other than an exchange-traded mutual fund that is not in continuous distribution,*" after "*A mutual fund*".*

*(3) Section 2.11 is amended by adding the following subsection:*

**2.11(3)** Subsection (1) does not apply to an exchange-traded mutual fund that is not in continuous distribution, or to a non-redeemable investment fund, if each prospectus of the investment fund filed since its inception has contained the disclosure referred to in paragraph (1)(a.1).

*19. Section 2.12 is amended*

*(a) by replacing "*a mutual fund*" with "*an investment fund*",*

*(b) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs,*

*(c) by replacing "*The mutual fund*" with "*The investment fund*",*

*(d) by replacing item 12 of subsection (1) with the following:*

12. Immediately after the investment fund enters into the transaction, the aggregate market value of all securities loaned by the investment fund in securities lending transactions and not yet returned to it or sold by the investment fund in repurchase transactions under section 2.13 and not yet repurchased does not exceed 50% of the net asset value of the investment fund.*,*

*(e) by replacing "*A mutual fund*" with "*An investment fund*" wherever it occurs, and*

*(f) by replacing "*shall*" with "*must*" wherever it occurs.*

*20. Section 2.13 is amended*

*(a) by replacing "*a mutual fund*" with "*an investment fund*",*

*(b) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs,*

*(c) by replacing item 11 of subsection (1) with the following:*

11. Immediately after the investment fund enters into the transaction, the aggregate market value of all securities loaned by the investment fund in securities lending transactions under section 2.12 and not yet returned to it or sold by the investment fund in repurchase transactions and not yet repurchased does not exceed 50% of the net asset value of the investment fund.**,** *and*

*(d) by replacing "*A mutual fund*" with "*An investment fund*".*

*21. Section 2.14 is amended*

*(a) by replacing "*a mutual fund*" with "*an investment fund*", and*

*(b) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs.*

*22. Section 2.15 is amended*

*(a) by replacing "*a mutual fund*" with "*an investment fund*" wherever it occurs,*

*(b) by replacing "*shall*" with "*must*" wherever it occurs,*

*(c) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs,*

*in subsection (1) by replacing "*in administering*" with "*to administer*", and*

*in paragraph (4)(c) by replacing "*the mutual fund's*" with "*the investment fund's*".*

*23. Section 2.16 is amended*

*(a) by replacing "*A mutual fund*" with "*An investment fund*",*

*(b) by replacing "*shall*" with "*must*" wherever it occurs,*

*(c) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs, and*

*(d) by replacing "*a mutual fund*" with "*an investment fund*".*

*24. Section 2.17 is replaced with the following:*

**Commencement of securities lending, repurchase and reverse repurchase transactions by an investment fund**

**2.17(1)** An investment fund must not enter into securities lending, repurchase or reverse repurchase transactions unless,

(a) in the case of a mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution, its prospectus contains the disclosure required for mutual funds entering into those types of transactions;

(b) in the case of an exchange-traded mutual fund that is not in continuous distribution or of a non-redeemable investment fund, the investment fund issues a news release that contains both of the following:

(i) the disclosure required in a prospectus for an exchange-traded mutual fund that is not in continuous distribution, or a non-redeemable investment fund, entering into those types of transactions;

(ii) the date on which the investment fund intends to begin entering into those types of transactions; and

(c) the investment fund provides to its securityholders, at least 60 days before it begins entering into those types of transactions, written notice that discloses its intent to begin entering into those types of transactions and the disclosure referred to in paragraph (a) or (b), as applicable.

**2.17(2)** Paragraph (1)(c) does not apply to a mutual fund that has entered into reverse repurchase agreements as permitted by a decision of the securities regulatory authority or regulator.

**2.17(3)** Paragraph (1)(c) does not apply to a mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution, if each prospectus of the mutual fund filed since its inception contains the disclosure referred to in paragraph (1)(a).

**2.17(4)** Subsection (1) does not apply to an exchange-traded mutual fund that is not in continuous distribution, or to a non-redeemable investment fund, if each prospectus of the investment fund filed since its inception contains the disclosure referred to in paragraph (1)(b).

*25. Section 2.18 is amended by adding the following subsection:*

**2.18(3)** A non-redeemable investment fund must not describe itself as a "money market fund".

*26. Section 3.1 is amended by replacing "*No person or company shall*" with "*A person or company must not*".*

*27. The following provisions are amended by replacing "*shall*" with "*must*":*

(a) subsection *3.1(2);*

(b) section *3.2.*

*28. Subsection 3.3(1) is amended*

*(a) by* replacing *"*None of the costs*" with "*The costs*", and*

(b) by *replacing "*shall*" with "*must not*".*

*29. Section 4.1 is amended*

*(a) by* replacing *"*mutual fund*" with "*investment fund*" wherever it occurs,*

*(b)by replacing "shall" with "*must*" wherever it occurs, and*

*(c) in subsection (5) by replacing "*corresponding provisions contained in securities legislation*" with "*provisions of securities legislation that are*".*

*30. Section 4.2 is amended*

*(a) by replacing "*A mutual fund shall*" with "*An investment fund must*",*

*(b) by replacing "*the *mutual* fund*" with "*the investment fund*" wherever it occurs, and*

*(c) by replacing "*a *mutual* fund*" with "*an investment fund*".*

*31. Section 4.3 is amended*

*(a) by replacing "*a mutual fund*" with "*an investment fund*" wherever it occurs,*

*(b) in subsection (1) by adding ":" after "*is*",*

*(c) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs, and*

*(d) by replacing "*another mutual fund*" with "*another investment fund*" wherever it occurs.*

*32. Section 4.4 is amended*

*(a) by replacing "*a mutual *fund" with "*an investment fund*" wherever it occurs,*

*(b) by replacing "*shall*" with "*must*" wherever it occurs,*

*(c) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs,*

*(d) by replacing "*A mutual fund*" with "*An investment fund*" wherever it occurs, and*

*(e) in subsection (5) by adding "*any of the following:*" after "*by*" and by deleting "*or*" at the end of paragraph (a).*

*33.(1) Section 5.1 is amended*

*(a) by renumbering it as subsection 5.1(1),*

*(b) by replacing* "a mutual fund*" with "*an investment fund*",*

*(c) by adding "*the occurrence of each of the following:*" after "*before*",*

*(d) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs,*

*(e) by replacing "*another mutual fund*" with "*another issuer*" wherever it occurs,*

*(f) by replacing "*other mutual fund*" with "*other issuer*" wherever it occurs,*

*(g) by deleting "*or*" at the end of subparagraph (f)(ii),*

*(h) by replacing "." with ";" at the end of paragraph (g), and*

*(i) by adding the following paragraph:*

(h) the investment fund implements any of the following:

(i) in the case of a non-redeemable investment fund, a restructuring into a mutual fund;

(ii) in the case of a mutual fund, a restructuring into a non-redeemable investment fund;

(iii) a restructuring into an issuer that is not an investment fund.

*(2) Section 5.1, as amended by subsection (1), is amended by adding the following subsection:*

5.1(2) An investment fund must not bear any of the costs or expenses associated with a restructuring referred to in paragraph (1)(h)**.**

*34. Section 5.2 is amended*

*(a) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs,*

*(b) by replacing "*section 5.1*" with "*subsection 5.1(1)*" wherever it occurs,*

*(c) by replacing "*shall*" with "*must*" wherever it occurs, and*

*(d) by replacing* "a mutual fund*" with "*an investment fund*" wherever it occurs.*

*35.(1) Subsection 5.3(1) is amended*

*(a)by replacing "*section 5.1*" with "*subsection 5.1(1)*",*

*(b) by replacing* "a mutual fund*" with "*an investment fund*",*

*(c) by replacing "*paragraphs 5.1(a)*" with "*paragraphs 5.1(1)(a)*" wherever it occurs,*

*(d) in paragraph (a) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs,*

*(e) in subparagraph (a)(iii) by adding "*at least*" after "*sent*",*

*(f) in paragraph (b) by replacing "*if*" with "*if, in the case of a mutual fund,*", and*

*(g) in subparagraph (b)(iii) by adding "*at least*" after "*sent*".*

*(2) Subsection 5.3(2) is replaced with the following:*

**5.3(2)** Despite subsection 5.1(1), the approval of securityholders of an investment fund is not required to be obtained for a change referred to in paragraph 5.1(1)(f) if either of the following paragraphs apply:

(a) all of the following apply:

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

(ii) the investment fund is being reorganized with, or its assets are being transferred to, another investment 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 investment fund;

(iii) the reorganization or transfer of assets of the investment fund complies with the criteria in paragraphs 5.6(1)(a), (b), (c), (d), (g), (h), (i), (j) and (k);

(iv) the prospectus of the investment 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;

(v) the notice referred to in subparagraph (iv) to securityholders is sent at least 60 days before the effective date of the change;

(b) all of the following apply:

(i) the investment fund is a non-redeemable investment fund that is being reorganized with, or its assets are being transferred to, a mutual fund that is

(A) a mutual fund to which this Instrument and NI 81-107 apply,

(B) managed by the manager, or an affiliate of the manager, of the investment fund,

(C) not in default of any requirement of securities legislation, and

(D) a reporting issuer in the local jurisdiction and the mutual fund has a current prospectus in the local jurisdiction;

(ii) the transaction is a tax-deferred transaction under subsection 85(1) of the ITA;

(iii) the securities of the investment fund do not give securityholders of the investment fund the right to request that the investment fund redeem the securities;

(iv) since its inception, there has been no market through which securityholders of the investment fund could sell securities of the investment fund;

(v) every prospectus of the investment fund discloses that

(A) securityholders of the investment fund, other than the manager, promoter or an affiliate of the manager or promoter, will cease to be securityholders of the investment fund within 30 months following the completion of the initial public offering by the investment fund, and

(B) the investment fund will, within 30 months following the completion of the initial public offering of the investment fund, undertake a reorganization with, or transfer its assets to, a mutual fund that is managed by the manager of the investment fund or by an affiliate of the manager of the investment fund;

(vi) the mutual fund bears none of the costs and expenses associated with the transaction;

(vii) the reorganization or transfer of assets of the investment fund complies with subparagraphs 5.3(2)(a)(i), (iv) and (v) and paragraphs 5.6(1)(d) and (k).

*36. The heading in section 5.3.1 is amended by replacing "*the Mutual Fund*" with "*an Investment Fund*".*

*37. Section 5.3.1 is amended*

*(a) by replacing "*the mutual fund may*" with "*an investment fund must*", and*

*(b) in paragraphs (a) and (b) by replacing "*mutual fund*" with "*investment fund*" wherever it occurs.*

*38. Section 5.4 is amended*

*(a) by replacing "*a mutual fund*" with "*an investment fund*",*

*(b) by replacing "*section 5.1*" with "*subsection 5.1(1)*",*

*(c) by replacing "*shall*" with "*must*" wherever it occurs,*

*(d) in subsection (1) by replacing "*not less than*" with "*at least*",*

*(e) by replacing "*paragraphs 5.1(a)*" with "*paragraphs 5.1(1)(a)*",*

*(f) by replacing "*the mutual fund*" with "*the investment fund*", and*

*(g) by replacing "*the mutual fund's*" with "*the investment fund's*".*

*39. Section 5.5 is amended*

*(a) by replacing "*a mutual fund*" with "*an investment fund*" wherever it occurs,*

*(b) in subsection (1) by adding the following paragraph immediately after paragraph (a):*

(a.1) a change of *control* of the manager of an investment fund occurs;,

*(c) by replacing "*the *mutual* fund*" with "*the investment fund*" wherever it occurs,*

*(d) by replacing "another* mutual fund*" with "*another issuer*", and*

*(e) by repealing subsection (2).*

*40.(1) Subsection 5.6(1) is replaced with the following:*

**5.6(1)** Despite subsection 5.5(1), the approval of the securities regulatory authority or regulator is not required to implement a transaction referred to in paragraph 5.5(1)(b) if all of the following paragraphs apply:

(a) the investment fund is being reorganized with, or its assets are being transferred to, another investment fund to which this Instrument applies and that

(i) is managed by the manager, or an affiliate of the manager, of the investment fund,

(ii) a reasonable person would consider to have substantially similar fundamental investment objectives, valuation procedures and fee structure as the investment fund,

(iii) is not in default of any requirement of securities legislation, and

(iv) is a reporting issuer in the local jurisdiction and, if it is a mutual fund, also has a current prospectus in the local jurisdiction;

(b) the transaction is a "qualifying exchange" within the meaning of section 132.2 of the ITA or is a tax-deferred transaction under subsection 85(1), 85.1(1), 86(1) or 87(1) of the ITA;

(c) the transaction contemplates the wind-up of the investment fund as soon as reasonably possible following the transaction;

(d) the portfolio assets of the investment fund to be acquired by the other investment fund as part of the transaction

(i) may be acquired by the other investment fund in compliance with this Instrument, and

(ii) are acceptable to the portfolio adviser of the other investment fund and consistent with the other investment fund’s fundamental investment objectives;

(e) the transaction is approved

(i) by the securityholders of the investment fund in accordance with paragraph 5.1(1)(f), unless subsection 5.3(2) applies, and

(ii) if required, by the securityholders of the other investment fund in accordance with paragraph 5.1(1)(g);

(f) the materials sent to securityholders of the investment fund in connection with the approval under paragraph 5.1(1)(f) include

(i) a circular that, in addition to other requirements prescribed by law, describes the proposed transaction, the investment fund into which the investment fund will be reorganized, the income tax considerations for the investment funds participating in the transaction and their securityholders, and, if the investment fund is a corporation and the transaction involves its shareholders becoming securityholders of an investment fund that is established as a trust, a description of the material differences between being a shareholder of a corporation and being a securityholder of a trust,

(ii) if the other investment fund is a mutual fund, the most recently filed fund facts document for the other investment fund, and

(ii) a statement that securityholders may, in respect of the reorganized investment fund,

(A) obtain all of the following documents at no cost by contacting the reorganized investment fund at an address or telephone number specified in the statement:

(I) if the reorganized investment fund is a mutual fund, the current prospectus;

(II) the most recently filed annual information form, if one has been filed;

(III) as applicable, the most recently filed fund facts document;

(IV) the most recently filed annual financial statements and interim financial reports;

(V) the most recently filed annual and interim management reports of fund performance, or

(B) access those documents at a website address specified in the statement;

(g) the investment fund has complied with Part 11 of National Instrument 81-106 *Investment* Fund *Continuous Disclosure* in connection with the making of the decision to proceed with the transaction by the board of directors of the manager of the investment fund or of the investment fund;

(h) the investment funds participating in the transaction bear none of the costs and expenses associated with the transaction;

(i) if the investment fund is a mutual fund, securityholders of the investment fund continue to have the right to redeem securities of the investment fund up to the close of business on the business day immediately before the effective date of the transaction;

(j) if the investment fund is a non-redeemable investment fund, all of the following apply:

(i) the investment fund issues and files a news release that discloses the transaction;

(ii) securityholders of the investment fund may redeem securities of the investment fund at a date that is after the date of the news release referred to in subparagraph (i) and before the effective date of the transaction;

(iii) the securities submitted for redemption in accordance with subparagraph (ii) are redeemed at a price equal to their net asset value per security on the redemption date;

(k) the consideration offered to securityholders of the investment fund for the transaction has a value that is equal to the net asset value of the investment fund calculated on the date of the transaction.

**5.6(1.1)** Despite subsection 5.5(1), the approval of the securities regulatory authority or regulator is not required to implement a transaction referred to in paragraph 5.5(1)(b) if all the conditions in paragraph 5.3(2)(b) are satisfied and the independent review committee of the

mutual fund involved in the transaction has approved the transaction in accordance with subsection 5.2(2) of NI 81-107.

*(2) Subsection 5.6(2) is amended by*

*(a) by replacing "*A mutual fund*" with "*An investment fund*",*

*(b) by replacing "*shall*" with "*must*",*

*(c) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs, and*

*(d) by replacing "*a mutual fund*" with "*an investment fund*".*

*41.(1) Subsection 5.7(1) is amended*

*(a) by replacing "*shall*" with "*must*",*

*(b) by replacing "*subsection 5.5(2)*" with "*(a.1)*",*

*(c) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs,*

*(d) in subparagraph(a)(iv) by adding "*or regulator*" after "*authority*",*

*(e) by replacing subparagraph (b)(ii) with the following*

(ii) details of the total annual returns of the investment fund and, if the other issuer is an investment fund, the other issuer for each of the previous five years,, *and*

*by replacing subparagraph (b)(iii) with the following:*

(iii) a description of the differences between, as applicable, the fundamental investment objectives, investment strategies, valuation procedures and fee structure of the investment fund and the other issuer and any other material differences between the investment fund and the other issuer, and.

*(2) Subsection 5.7(2) is amended*

*(a) by replacing "*A mutual fund*" with "*An investment fund*",*

*(b) by replacing "*shall*" with "*must*",*

*(c) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs, and*

*(d) by replacing "*situate*" with "*situated*".*

*(3) Subsection 5.7(3) is amended*

*(a) by replacing "*A mutual fund*" with "*An investment fund*",*

*(b) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs, and*

*(c) by replacing "*situate*" with "*situated*".*

*42. Section 5.8 is amended*

*(a) in subsection (1) by replacing "*No person or company that is a manager of a mutual fund may*" with "*A person or company must not*" and by replacing "*the mutual fund*" with "*an investment fund*",*

*(b) in paragraph (1)(a) by replacing "*the mutual fund*" with "*the investment fund*",*

*(c) in subsection (2) by replacing "*No mutual fund shall*" with "*A mutual fund must not*", and*

*(d) in subsection (3) by replacing "*shall*" with "*must*".*

*43. The Instrument is amended by adding the following section:*

**Termination of a non-redeemable investment fund**

**5.8.1(1)** A non-redeemable investment fund must not terminate unless the investment fund first issues and files a news release that discloses the termination.

**5.8.1(2)** A non-redeemable investment fund must not terminate earlier than 15 days or later than 90 days after the filing of the news release under subsection (1).

**5.8.1(3)** Subsections (1) and (2) do not apply in respect of a transaction referred to in paragraph 5.1(1)(f).

*44. Section 5.9 is amended by replacing "mutual fund" with "investment fund" wherever it occurs.*

*45. Section 6.1 is amended*

*(a) by replacing "*a mutual fund*" with "*an investment fund*" wherever it occurs,*

*(b) by replacing "*shall*" with "*must*" wherever it occurs,*

*(c) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs,*

*(d) in subsection (3) by deleting ",* for each appointment,*",*

*(e) by replacing paragraph (3)(a) with the following:*

(a) in the case *of* an appointment by the custodian, the investment fund consents in writing to the appointment,

(a.1) in the case of an appointment by a sub-custodian, the investment fund and the custodian of the investment fund consent in writing to the appointment**,**

*(f) in paragraph (3)(b) by replacing "*a person or company*" with "*an entity*" and by replacing ";" with ",",*

*(g) in paragraph (3)(c) by replacing ";" with ",",*

*(h) in subsection (4) by replacing "*paragraph (3)(a)*" with "*paragraphs (3)(a) and (a.1)*" and by replacing "*persons or companies*" with "*entities*", and*

*(i) in subsection (5) by replacing "*each person or company that is appointed sub-custodian*" with "*all entities that are appointed sub-custodians*".*

*46. Section 6.2 is replaced with the following:*

**Entities qualified to act as custodian or sub-custodian for assets held in Canada**

**6.2** If portfolio assets are held in Canada by a custodian or sub-custodian, the custodian or sub-custodian must be one of the following:

1. a bank listed in Schedule I, II or III of the *Bank Act* (Canada);

2. a trust company that is incorporated under the laws of Canada or a jurisdiction and licensed or registered under the laws of Canada or a jurisdiction, and that has equity, as reported in its most recent audited financial statements, of not less than $10,000,000;

3. a company that is incorporated under the laws of Canada or of a jurisdiction, and that is an affiliate of a bank or trust company referred to in paragraph 1 or 2, if either of the following applies:

(a) the company has equity, as reported in its most recent audited financial statements that have been made public, of not less than $10,000,000;

(b) the bank or trust company has assumed responsibility for all of the custodial obligations of the company for that investment fund.

*47. Section 6.3 is replaced with the following:*

**Entities qualified to act as sub-custodian for assets held outside Canada**

**6.3** If portfolio assets are held outside of Canada by a sub-custodian, the sub-custodian must be one of the following:

1. an entity referred to in section 6.2;

2. an entity that

(a) is incorporated or organized under the laws of a country, or a political subdivision of a country, other than Canada,

(b) is regulated as a banking institution or trust company by the government, or an agency of the government, of the country under the laws of which it is incorporated or organized, or a political subdivision of that country, and

(c) has equity, as reported in its most recent audited financial statements, of not less than the equivalent of $100,000,000;

3. an affiliate of an entity referred to in paragraph 1 or 2 if either of the following applies:

(a) the affiliate has equity, as reported in its most recent audited financial statements that have been made public, of not less than the equivalent of $100,000,000;

(b) the entity referred to in paragraph 1 or 2 has assumed responsibility for all of the custodial obligations of the affiliate for that investment fund.

*48. Section 6.4 is amended*

*(a) by replacing subsection 6.4(1) with the following:*

**6.4(1)** All custodian agreements and sub-custodian agreements of an investment fund must provide for

(a) the location of portfolio assets,

(b) any appointment of a sub-custodian,

(c) requirements concerning lists of sub-custodians,

(d) the method of holding portfolio assets,

(e) the standard of care and responsibility for loss, and

(f) requirements concerning review and compliance reports.

*(b) in subsection 6.4(2) by replacing "*a mutual fund shall*" with "*an investment fund must*" and by replacing "*the mutual fund*" with "*the investment fund*",*

*(c) by adding the following subsection immediately after subsection 6.4(2):*

**6.4(2.1)** An agreement referred to under subsections (1) and (2) must comply with the requirements of this Part., *and*

*(d) by replacing subsection (3) with the following:*

**6.4(3)** A custodian agreement or sub-custodian agreement concerning the portfolio assets of an investment fund must not

(a) provide for the creation of any security interest on the portfolio assets of the investment fund except for a good faith claim for payment of the fees and expenses of the custodian or a sub-custodian for acting in that capacity or to secure the obligations of the investment fund to repay borrowings by the investment fund from the custodian or a sub-custodian for the purpose of settling portfolio transactions; or

(b) contain a provision that would require the payment of a fee to the custodian or a sub-custodian for the transfer of the beneficial ownership of portfolio assets of the investment fund, other than for safekeeping and administrative services in connection with acting as custodian or sub-custodian.

*49. Section 6.5 is replaced with the following:*

**Holding of portfolio assets and payment of fees**

**6.5(1)** Except as provided in subsections (2) and (3) and sections 6.8, 6.8.1 and 6.9, portfolio assets of an investment fund not registered in the name of the investment fund must be registered in the name of the custodian or a sub-custodian of the investment fund, or any of their respective nominees, with an account number or other designation in the records of the custodian sufficient to show that the beneficial ownership of the portfolio assets is vested in the investment fund.

**6.5(2)** The custodian or a sub-custodian of an investment fund, or an applicable nominee, must segregate portfolio assets issued in bearer form to show that the beneficial ownership of the property is vested in the investment fund.

**6.5(3)** The custodian or a sub-custodian of an investment fund may deposit portfolio assets of the investment fund with a depository, or a clearing agency, that operates a book-based system.

**6.5(4)** The custodian or a sub-custodian of an investment fund arranging for the deposit of portfolio assets of the investment fund with, and their delivery to, a depository, or clearing agency, that operates a book-based system must ensure that the records of any of the applicable participants in that book-based system or of the custodian contain an account number or other designation sufficient to show that the beneficial ownership of the portfolio assets is vested in the investment fund.

**6.5(5)** An investment fund must not pay a fee to the custodian or a sub-custodian of the investment fund for the transfer of beneficial ownership of portfolio assets of the investment fund other than for safekeeping and administrative services in connection with acting as custodian or sub-custodian.

*50. Section 6.6 is amended*

*(a) by replacing "*a mutual fund*" with "*an investment fund*",*

*(b) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs,*

*(c) by replacing "*shall*" with "*must*" wherever it occurs,*

*(d) by replacing "*A mutual fund*" with "*An investment fund*" wherever it occurs,*

*(e) in subsection (3) by replacing "*a custodian or sub-custodian*" with "*the custodian or a sub-custodian*" and by replacing "*described in*" with "*imposed by*", and*

*(f) in subsection (4) by replacing "*a custodian or sub-custodian*" with "*the custodian or a sub-custodian*".*

*51. Section 6.7 is amended*

*(a) by replacing "*a mutual fund*" with "*an investment fund*" wherever it occurs,*

*(b) by replacing "*shall*" with "*must*" wherever it occurs,*

*(c) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs,*

*(d) in subsection (2) by replacing "*not more than*" with "*within*", and*

*(e) by replacing paragraph (2)(c) with the following:*

(c) whether, to the best of the knowledge and belief of the custodian, each sub-custodian satisfies section 6.2 or 6.3, as applicable.

*52. Section 6.8 is amended*

*(a) by replacing "*A mutual fund*" with "*An investment fund*" wherever it occurs,*

*(b) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs, and*

*(c) by replacing subsection 6.8(4) with the following:*

**6.8(4)** The agreement by which portfolio assets are deposited in accordance with subsection (1), (2) or (3) must require the person or company holding the portfolio assets to ensure that its records show that the investment fund is the beneficial owner of the portfolio assets.

*53. Section 6.8.1 is amended*

*(a) by replacing "*the mutual fund's*" with "*the investment fund's*",*

*(b) by replacing "*a mutual fund*" with "*an investment fund*",*

*(c) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs, and*

*(d) by replacing "*A mutual fund*" with "*An investment fund*" wherever it occurs.*

*54. Section 6.9 is amended*

*(a) by replacing "*A mutual fund*" with "*An investment fund*",*

*(b) by replacing "*institution*" with "*entity*", and*

*(c) by replacing "*the mutual fund*" with "*the investment fund*" .*

*55. Section 7.1 is amended*

*(a) by replacing* "shall not pay*" with "*must not pay*", and*

*(b) by replacing "*no securities of a mutual fund shall*" with "*securities of a mutual fund must not*".*

*56. Section 8.1 is amended by replacing "*No securities of a mutual fund shall be sold*" with "*A person or company must not sell securities of a mutual fund*".*

*57. The heading in Part 9 is amended by replacing "*a Mutual Fund*" with "*an Investment Fund*".*

*58. Section 9.0.1 is replaced with the following:*

**Application**
**9.0.1** This Part, other than subsection 9.3(2), does not apply to an exchange-traded mutual fund that is not in continuous distribution**..**

*59. Section 9.1 is amended by replacing "shall" with "must" wherever it occurs.*

*60.(1) Section 9.3 is amended*

*(a) by renumbering it as subsection 9.3(1), and*

*(b) by replacing "*shall*" with "*must*".*

*(2) Section 9.3, as amended by subsection (1), is amended by adding the following subsection:*

**9.3(2)** The issue price of a security of an exchange-traded mutual fund that is not in continuous distribution, or of a non-redeemable investment fund, must not,

(a) as far as reasonably practicable, be a price that causes dilution of the net asset value of other outstanding securities of the investment fund at the time the security is issued, and

(b) be a price that is less than the most recent net asset value per security of that class, or series of a class, calculated prior to the pricing of the offering.

*61. Section 9.4 is amended by replacing "shall" with "must" wherever it occurs.*
*62. The Instrument is amended by adding the following Part immediately after Part 9:*

PART 9.1 – WARRANTS AND SPECIFIED DERIVATIVES

**Issuance of warrants or specified derivatives**
**9.1.1** An investment fund must not

(a) issue a conventional warrant or right, or

(b) enter into a position in a specified derivative the underlying interest of which is a security of the investment fund**.**

*63. The heading in Part 10 is amended by replacing "*a Mutual Fund*" with "*an Investment Fund*".*

*64. (1) Subsection 10.1(1) is amended*

*(a) by replacing "*No mutual fund*" with "*An investment fund*",*

*(b) by replacing "*shall*" with "*must not*", and*

*(c) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs.*

*(2) Subsection 10.1(2) is amended*

*(a) by replacing "*A mutual fund*" with "*An investment fund*",*

*(b) by replacing "*the mutual fund*" with "*the investment fund*",*

*(c) by adding "*by the following times:*" after "*delivered*", and*

*(d) by replacing paragraph (a) with the following:*

(a) in the case of a mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution, by the time of delivery of a redemption order to an order receipt office of the mutual fund;

(a.1) in the case of an exchange-traded mutual fund that is not in continuous distribution or of a non-redeemable investment fund, by the time of delivery of a redemption order;

*(3) Subsection 10.1(3) is replaced with the following:*

**10.1(3)** A manager of an investment fund must provide to securityholders of the investment fund at least annually a statement containing the following:

(a) a description of the requirements referred to in subsection (1);

(b) a description of the requirements established by the investment fund under subsection (2);

(c) a detailed reference to all documentation required for redemption of securities of the investment fund;

(d) detailed instructions on the manner in which documentation is to be delivered to participating dealers, the investment fund or a person or company providing services to the investment fund to which a redemption order may be made;

(e) a description of all other procedural or communication requirements;

(f) an explanation of the consequences of failing to meet timing requirements.

*65. Section 10.2 is amended by replacing "*shall*" with "*must*" wherever it occurs.*

*66. Section 10.3 is amended*

*(a) by replacing "*shall*" with "*must*", and*

*(b) by adding the following subsection:*

(4) The redemption price of a security of a non-redeemable investment fund must not be a price that is more than the net asset value of the security determined on a redemption date specified in the prospectus or annual information form of the investment fund.

*67. Section 10.4 is amended*

*(a) by replacing subsection 10.4(1.1) with the following:*

**10.4(1.1)** Despite subsection (1), an exchange-traded mutual fund that is not in continuous distribution must pay the redemption proceeds for securities that are the subject of a redemption order no later than 15 business days after the valuation date on which the redemption price was established.

**10.4(1.2)** A non-redeemable investment fund must pay the redemption proceeds for securities that are the subject of a redemption order no later than 15 business days after the valuation date on which the redemption price was established**.,**

*(b) in subsection 10.4(3) by replacing "*A mutual fund*" with "*An investment fund*", and*

*(c) in subsection 10.4(5) by replacing "*a mutual fund*" with "*an investment fund*" and by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs.*

*68. Section 10.5 is amended by replacing "shall" with "must" wherever it occurs.*

*69. (1) Subsection 10.6(1) is amended*

*(a) by replacing "*A mutual fund*" with "*An investment fund*", and*

*(b) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs.*

*(2) Subsection 10.6(2) is amended*

*(a) by replacing "*A mutual fund*" with "*An investment fund*",*

*(b) by adding ",* (1.1) or (1.2)*" after "*subsection 10.4(1)*", and*

*(c) by adding "*or regulator*" after "*authority*".*

*(3) Subsection 10.6(3) is amended*

*(a) by replacing "*A mutual fund shall*" with "*An investment fund must*",*

*(b) by replacing "*the mutual fund*" with "*the investment fund*", and*

*(c) by replacing "*authorities*" with "*authority or regulator*".*

*70. The heading in section 11.1 is amended by adding "and Service Providers" after "Distributors".*

*71. (1) Subsection 11.1(1) is replaced with the following:*

**11.1(1)** Cash received by a principal distributor of a mutual fund, by a person or company providing services to the mutual fund or the principal distributor, or by a person or company providing services to a non-redeemable investment fund, for investment in, or on the redemption of, securities of the investment fund, or on the distribution of assets of the investment fund, until disbursed as permitted by subsection (3),

(a) must be accounted for separately and be deposited in a trust account or trust accounts established and maintained in accordance with the requirements of section 11.3, and

(b) may be commingled only with cash received by the principal distributor or service provider for the sale or on the redemption of other investment fund securities.

*(2) Subsection 11.1(2) is amended*

*(a) by replacing "*distributor or person*" with "*distributor, a person*", and*

*(b) by replacing "*shall*" with ",* or a person or company providing services to the non-redeemable investment fund, must*".*

*(3) Subsection 11.1(3) is amended*

*(a) by replacing "*a mutual fund*" with "*an investment fund*",*

*(b) by replacing "*for the purpose of*" with "*for any of the following purposes:*",*

*(c) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs, and*

*(d) by deleting "*or*" at the end of paragraph (b).*

*(4) Subsection 11.1(4) is amended*

*(a) by replacing "*shall*" with "*must*",*

*(b) by replacing "*the mutual funds*" with "*the investment funds*", and*

*(c) by replacing "*a mutual fund*" with "*an investment fund*" .*

*(5) Subsection 11.1(5) is amended*

*(a) by replacing "*a mutual fund*" with "*an investment fund*", and*

*(b) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs.*

*72. Section 11.2 is amended by replacing "shall" with "must" wherever it occurs.*

*73. Section 11.3 is amended*

*(a) by replacing "*dealer, or a person*" with "*dealer, a person*",*

*(b) by adding "*or a person or company providing services to an investment fund,*" before "*that deposits cash*",*

*(c) by replacing "*shall*" with "*must*",*

*(d) in subparagraph (a)(iii) by replacing "*dealer or of a person*" with "*dealer, of a person*" and by adding "*or of a person or company providing services to the investment fund,*" before "*and*", and*

*(e) in subparagraph (a)(iv) by replacing "*dealer, or of a person*" with "*dealer, of a person*" and by adding "*or of a person or company providing services to the investment fund;*" at the end of the subparagraph.*

*74. Section 11.4 is amended*

*(a) by adding the following subsection immediately after subsection 11.4(1.2):*

**11.4(1.3)** Section 11.1 does not apply to CDS Clearing and Depository Services Inc.**,** *and*

*(b) by replacing "*shall*" with "*must*".*

*75. Section 11.5 is amended*

*(a) by replacing "*mutual fund*" with "*investment fund*" wherever it occurs, and*

*(b) by replacing "*shall*" with "*must*".*

*76. Section 12.1 is amended by replacing "shall" with "must" wherever it occurs.*

*77. Section 14.1 is amended by replacing "shall" with "must".*

*78. Section 15.1 is amended*

*(a) by replacing "*a mutual fund*" with "*an investment fund*",*

*(b) by replacing "*may*" with "*must*", and*

*(c) by deleting "*only*".*

*79. Section 15.2 is amended*

*(a) in subsection (1) by replacing "*no sales communication shall*" with "*a sales communication must not*",*

*(b) in paragraph (1)(b) by adding ",* as applicable,*" after "*the fund facts document*" and by replacing "*a mutual fund*" with "*an investment fund*", and*

*(c) in subsection (2) by replacing "*shall*" with "*must*" .*

*80. Section 15.3 is amended*

*(a) by replacing "*shall*" with "*must*" wherever it occurs,*

*(b) in subsection 15.3(1) by replacing "*a mutual fund*" with "*an investment fund*",*

*(c) in subsection 15.3(2) by replacing "*15.6(a)*" with "*15.6(1)(a)*",*

*(d) by adding the following subsection immediately after subsection 15.3(2):*

**15.3(2.1)** A sales communication for a non-redeemable investment fund that is restricted by paragraph 15.6(1)(a) from disclosing performance data must not provide performance data for any benchmark or investment, other than a non-redeemable investment fund under common management with the non-redeemable investment fund to which the sales communication pertains**.,**

*(e) in subsection (5) by replacing "*a mutual fund*" with "*an investment fund*" and by replacing "*the mutual fund*" with "*the investment fund*",*

*(f) in subsection (6) by deleting ",* either under National Policy Statement No. 39 or*", and*

*(g) in subsection (7) by replacing "*mutual fund*" with "*investment fund*".*

*81. (1) Subsection 15.4(1) is amended*

*(a) by replacing "*shall*" with "*must*", and*

*(b) by deleting "*principal distributor or participating*".*

*(2) Subsection 15.4(2) is amended*

*(a) by replacing "*shall*" with "*must*", and*

*(b)by replacing "*mutual fund*" with "*investment fund*" wherever it occurs.*

*(3) Subsection 15.4(3) is amended by replacing "*shall*" with "*must*".*

*(4) Section 15.4 is amended by adding the following subsection immediately after subsection 15.4(3):*

**15.4(3.1)** A sales communication, other than a report to securityholders, of a non-redeemable investment fund that does not contain performance data must contain a warning in substantially the following words:

[*If the securities of the non-redeemable investment fund are listed or quoted on an exchange or other market, state the following:*] "You will usually pay brokerage fees to your dealer if you purchase or sell [units or shares] of the investment fund on [*state the exchange or other market on which the securities of the investment fund are listed or quoted*]. If the [units or shares] are purchased or sold on [*state the exchange or other market*], investors may pay more than the current net asset value when buying [units or shares] of the investment fund and may receive less than the current net asset value when selling them."

[*State the following in all cases:*] "There are ongoing fees and expenses associated with owning [units or shares] of an investment fund. An investment fund must prepare disclosure documents that contain key information about the fund. You can find more detailed information about the fund in these documents. Investment funds are not guaranteed, their values change frequently and past performance may not be repeated."

*(5) The following subsections are amended by replacing "*shall*" with "*must*":*

*(a) subsection 15.4(4);*

*(b) subsection 15.4(5);*

*(c) subsection 15.4(6).*

*(6) Section 15.4 is amended by adding the following subsection immediately after subsection 15.4(6):*

**15.4(6.1)** A sales communication, other than a report to securityholders, of a non-redeemable investment fund that contains performance data must contain a warning in substantially the following words:

[*If the securities of the non-redeemable investment fund are listed or quoted on an exchange or other market, state the following:*] "You will usually pay brokerage fees to your dealer if you purchase or sell [units or shares] of the investment fund on [*state the exchange or other market on which the securities of the investment fund are listed or quoted*]. If the [units or shares] are purchased or sold on [*state the exchange or other market*], investors may pay more than the current net asset value when buying [units or shares] of the investment fund and may receive less than the current net asset value when selling them."

[*State the following in all cases:*] "There are ongoing fees and expenses associated with owning [units or shares] of an investment fund. An investment fund must prepare disclosure documents that contain key information about the fund. You can find more detailed information about the fund in these documents. The indicated rate[s] of return is [are] the historical annual compounded total return[s] including changes in [share or unit] value and reinvestment of all [dividends or distributions] and does [do] not take into account [*state the following, as applicable:*] [certain fees such as redemption fees or optional charges or]

income taxes payable by any securityholder that would have reduced returns. Investment funds are not guaranteed, their values change frequently and past performance may not be repeated.".

*(7) The following subsections are amended by replacing "*shall*" with "*must*":*

*(a) subsection 15.4(7);*

*(b) subsection 15.4(8);*

*(c) subsection 15.4(9).*

*(8) Subsection 15.4(10) is amended*

*(a) by replacing "*a mutual fund*" with "*an investment fund*",*

*(b) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs, and*

*(c) by replacing "*shall*" with "*must*".*

*(9) Subsection 15.4(11) is amended by replacing "*shall*" with "*must*".*

*82. Section 15.5 is amended*

*(a) in subsection 15.5(1) by replacing "*No person or company shall*" with "*A person or company must not*", and*

*(b) by replacing "*shall*" with "*must*" wherever it occurs.*

*83. Section 15.6 is replaced with the following:*

**Performance data - general requirements**
**15.6(1)** A sales communication pertaining to an investment fund or asset allocation service must not contain performance data of the investment fund or asset allocation service unless all of the following paragraphs apply:

(a) one of the following subparagraphs applies:

(i) in the case of a mutual fund, either of the following applies:

(A) the mutual fund has distributed securities under a prospectus in a jurisdiction for a period of at least 12 consecutive months;

(B) the mutual fund previously existed as a non-redeemable investment fund and has been a reporting issuer in a jurisdiction for a period of at least 12 consecutive months;

(ii) in the case of a non-redeemable investment fund, the non-redeemable investment fund has been a reporting issuer in a jurisdiction for at least 12 consecutive months;

(iii) in the case of an asset allocation service, the asset allocation service has been operated for at least 12 consecutive months and has invested only in participating funds each of which has distributed securities under a prospectus in a jurisdiction for at least 12 consecutive months;

(iv) if the sales communication pertains to an investment fund or asset allocation service that does not satisfy subparagraph (i), (ii) or (iii), the sales communication is sent only to one of the following:

(A) securityholders of the investment fund or participants in the asset allocation service;

(B) securityholders of an investment fund or participants in an asset allocation service under common management with the investment fund or asset allocation service;

(b) the sales communication includes standard performance data of the investment fund or asset allocation service and, in the case of a written sales communication, the standard performance data is presented in type size that is equal to or larger than that used to present the other performance data;

(c) the performance data reflects or includes references to all elements of return;

(d) except as permitted by subsection 15.3(3), the sales communication does not contain performance data for a period that is,

(i) in the case of a mutual fund, before the time when the mutual fund offered its securities under a prospectus;

(ii) in the case of a non-redeemable investment fund, before the non-redeemable investment fund was a reporting issuer;

(iii) in the case of an asset allocation service, before the asset allocation service commenced operation.

**15.6(2)** Despite subparagraph (1)(d)(i), a sales communication pertaining to a mutual fund referred to in clause (1)(a)(i)(B) that contains performance data of the mutual fund must include performance data for the period that the fund existed as a non-redeemable investment fund and was a reporting issuer.

*84. Section 15.7 is amended by replacing "*shall*" with "*must*".*

*85. The Instrument is amended by adding the following section immediately after section 15.7:*

**Advertisements for non-redeemable investment funds**

**15.7.1** An advertisement for a non-redeemable investment fund must not compare the performance of the non-redeemable investment fund with any benchmark or investment other than any of the following:

(a) one or more non-redeemable investment funds that are under common management or administration with the non-redeemable investment fund to which the advertisement pertains;

(b) one or more non-redeemable investment funds that have fundamental investment objectives that a reasonable person would consider similar to the non-redeemable investment fund to which the advertisement pertains;

(c) an index.

*86. (1) Subsection 15.8(2) is amended*

*(a) by replacing "*asset allocation service or to a mutual fund*" with "*asset allocation service, or to an investment fund*",*

*(b) by replacing "*may*" with "*, must not*",*

*(c) by replacing "*only if*" with "*unless,*",*

*(d) by replacing paragraph (a) with the following:*

(a) to the extent applicable, the standard performance data has been calculated for 10, 5, 3 and one year periods,

(a.1) in the case of a mutual fund that has been offering securities by way of prospectus for more than one and less than 10 years, the standard performance data has been calculated for the period since the inception of the mutual fund,

(a.2) in the case of a non-redeemable investment fund that has been a reporting issuer for more than one and less than 10 years, the standard performance data has been calculated for the period since the inception of the non-redeemable investment fund, and**,** *and*

*(e) in paragraph (b) by replacing "*paragraph (a)*" with "*paragraphs (a), (a.1) and (a.2)*".*

*(2) Subsection 15.8(3) is amended*

*(a) by replacing "*may*" with "*must not*",*

*(b) by replacing "*only if*" with "*unless,*",*

*(c) by replacing paragraph (a) with the following:*

(a) to the extent applicable, the standard performance data has been calculated for 10, 5, 3 and one year periods,

(a.1) in the case of a mutual fund that has been offering securities by way of prospectus for more than one and less than 10 years, the standard performance data has been calculated for the period since the inception of the mutual fund,

(a.2) in the case of a non-redeemable investment fund that has been a reporting issuer for more than one and less than 10 years, the standard performance data has been calculated for the period since the inception of the non-redeemable investment fund, and, *and*

*(d) in paragraph (b) by replacing "*paragraph (a)*" with "*paragraphs (a), (a.1) and (a.2)*".*

*(3) Subsection 15.8(4) is amended by replacing "*shall*" with "*must*".*

*87. Section 15.9 is amended*

*(a) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs,*

*(b) by replacing "*shall*" with "*must*" wherever it occurs,*

*(c) by replacing "*a mutual fund*" with "*an investment fund*",*

*(d) by replacing "*another mutual fund*" with "*another investment fund*", and*

*(e) by replacing "*other mutual fund*" with "*other investment fund*".*

*88. Section 15.10 is amended*

*(a) by replacing "*a mutual fund*" with "*an investment fund*" wherever it occurs,*

*(b) by replacing "*shall*" with "*must*" wherever it occurs,*

*(c) in subsection (1) by replacing "*section*" with "*Part*",*

*(d) in subsection (2) by replacing the definition of "***standard performance data***" with the following:*

"**standard performance data**" means, as calculated in each case in accordance with this Part,

(a) for a money market fund, either of the following:

(i) the current yield;

(ii) the current yield and effective yield, if the effective yield is reported in a type size that is at least equal to that of the current yield, and

(b) for any investment fund other than a money market fund, the total return;*, and*

*(e) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs.*

*89. Section 15.11 is amended*

*(a) by replacing "*shall*" with "*must*" wherever it occurs,*

*(b) by replacing "*a mutual fund*" with "*an investment fund*",*

*(c) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs, and*

*(d) by replacing item 6 of subsection (1) with the following:*

6. In the case of a mutual fund, a complete redemption occurs at the end of the performance measurement period so that the ending redeemable value includes elements of return that have been accrued but not yet paid to securityholders.

7. In the case of a non-redeemable investment fund, a complete redemption occurs at the net asset value of one security at the end of the performance measurement period so that the ending redeemable value includes elements of return that have been accrued but not yet paid to securityholders..

*90. Section 15.12 is amended by replacing "*shall*" with "*must*".*

*91. Section 15.13 is amended*

*(a) in subsection (1) by replacing "*mutual fund shall*" with "*investment fund must*", and*

*(b) by replacing subsection (2) with the following:*

(2) A communication by an investment fund or asset allocation service, its promoter, manager, portfolio adviser, principal distributor, participating dealer or a person providing services to the investment fund or asset allocation service must not describe the investment fund as a commodity pool or as a vehicle for investors to participate in the speculative trading of, or leveraged investment in, derivatives, unless the investment fund is a commodity pool as defined in National Instrument 81-104 *Commodity Pools*..

*92. The heading in section 15.14 is amended by replacing "*Mutual Funds*" with "*Investment Funds*".*

*93. Section 15.14 is amended*

*(a) by replacing "*a mutual fund*" with "*an investment fund*", and*

*(b) by replacing "*shall*" with "*must*" wherever it occurs.*

*94. Section 18.1 is amended*

*(a) by replacing "*A mutual fund*" with "*An investment fund*",*

*(b) by replacing "*shall*" with "*must*", and*

*(c) by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs.*

*95. Section 18.2 is amended*

*(a) by replacing subsection (1) with the following:*

(1) An investment fund that is not a corporation must make, or cause to be made, the records referred to in section 18.1 available for inspection, free of charge, during normal business hours at its principal or head office by a securityholder or a representative of a securityholder, if the securityholder has agreed in writing that the information contained in the register will not be used by the securityholder for any purpose other than either of the following:

(a) in the case of a mutual fund, attempting to influence the voting of securityholders of the mutual fund or a matter relating to the relationships among the mutual fund, the members of the organization of the mutual fund, and the securityholders, partners, directors and officers of those entities;

(b) in the case of a non-redeemable investment fund, attempting to influence the voting of securityholders of the non-redeemable investment fund or a matter relating to the relationships among the non-redeemable investment fund, the manager and portfolio adviser of the non-redeemable investment fund and any of their affiliates, and the securityholders, partners, directors and officers of those entities., *and*

*(b) in subsection (2) by replacing "*A mutual fund shall*" with "*An investment fund must*" and by replacing "*the mutual fund*" with "*the investment fund*" wherever it occurs.*

*96. Subsection 19.2(3) is amended by replacing "*shall*" with "*must*".*

*97. Subsection 19.3(1) is amended by replacing ";" with ".".*

*98. (1) Section 20.4 is amended*

*(a) by renumbering it as subsection 20.4(1), and*

*(b) by replacing "*2.3(b)*" with "*2.3(1)(b)*".*

*(2) Section 20.4, as amended by subsection (1), is amended by adding the following subsection:*

(2) If a non-redeemable investment fund has adopted fundamental investment objectives to permit it to invest in mortgages, paragraph 2.3(2)(b) does not apply to the non-redeemable investment fund if the non-redeemable investment fund was established, and has a prospectus for which a receipt was issued, on or before September 22, 2014**..**

*99. Appendix C is amended*

*(a) by replacing "*British Columbia*" with "*All Jurisdictions*",*

*(b) by replacing "* s. 81 of the Securities Rules (British Columbia)*" with "*s. 13.6 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations",*

*(c) by deleting "*New Brunswick*" and "*s. 13.2 of Local Rule 31-501 *Registration Requirements", and*

*(d) by deleting "*Nova Scotia*" and "*s. 67 of the General Securities Rules*".*

*100. The Instrument is amended by adding the following appendices after Appendix C:*

**Appendix D**

**Investment Fund Conflict of Interest Investment Restrictions**

| **Jurisdiction** | **Securities Legislation Reference** |
|---|---|
| All Jurisdictions | ss. 13.5(2)(a) and (b) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* |
| Alberta | ss. 185(2) and (3) of the *Securities Act* (Alberta) |
| British Columbia | s. 6(2) of BC Instrument 81-513 *Self-Dealing* |
| New Brunswick | s. 137(2) of the *Securities Act* (New Brunswick) |
| Newfoundland and Labrador | ss. 112(2), 112(3), 119(2)(a) and 119(2)(b) of the *Securities Act* (Newfoundland and Labrador) |
| Nova Scotia | ss. 119(2) and (3) of the *Securities Act* (Nova Scotia) |
| Ontario | ss. 111(2) and (3) of the *Securities Act* (Ontario) |
| Saskatchewan | ss. 120(2) and (3) of the *The Securities Act, 1988* (Saskatchewan) |

## Appendix E

### Investment Fund Conflict of Interest Reporting Requirements

| Jurisdiction | Securities Legislation Reference |
|---|---|
| Alberta | s. 191(1)(a) of the *Securities Act* (Alberta) |
| British Columbia | s. 9(a) of BC Instrument 81-513 *Self-Dealing* |
| New Brunswick | s. 143(1)(a) of the *Securities Act* (New Brunswick) |
| Newfoundland and Labrador | s. 118(1)(a) of the *Securities Act* (Newfoundland and Labrador) |
| Nova Scotia | s. 125(1)(a) of the *Securities Act* (Nova Scotia) |
| Ontario | s. 117(1)(a) of the *Securities Act* (Ontario) |
| Saskatchewan | s. 126(1)(a) of the *The Securities Act, 1988* (Saskatchewan)**.** |

**Transition**

101. (1) If a non-redeemable investment fund filed a prospectus on or before September 22, 2014,

(a) until September 21, 2015, sections 2.12 to 2.17 of National Instrument 81-102 *Mutual Funds* do not apply to the non-redeemable investment fund, and

(b) until March 21, 2016, sections 2.2, 2.3 and 2.5 of National Instrument 81-102 *Mutual Funds* do not apply to the non-redeemable investment fund.

(2) If a mutual fund filed a prospectus on or before September 22, 2014, until March 21, 2016, subsection 2.5(2) of National Instrument 81-102 *Mutual Funds*, as amended by subsection 11(2) of this Instrument, does not apply to the mutual fund if the mutual fund complies with subsection 2.5(2) of National Instrument 81-102 *Mutual Funds* as that provision was in force on September 21, 2014.

(3) Despite any amendments to the contrary in this Instrument, if a sales communication, other than an advertisement, was printed before September 22, 2014, the sales communication may be used until March 23, 2015.

**Effective date**

102. (1) Subject to subsection (2), this Instrument comes into force on September 22, 2014.

(2) Subsection 64(3) of this Instrument comes into force on January 1, 2015.

**Citation**

103. This Instrument may be cited as MSC Rule 2014-2.

**ANNEX C**

**SCHEDULE C-2**

**BLACKLINE SHOWING CHANGES TO COMPANION POLICY 81-102CP TO NATIONAL INSTRUMENT 81-102 *MUTUAL FUNDS***

This Schedule shows, by way of blackline, changes to Companion Policy 81-102CP. These changes become effective on September 22, 2014.

**Companion Policy 81-102CP to**
**National Instrument 81-102 ~~*Mutual*~~*Investment Funds***

**Table of Contents**

**Companion Policy 81-102CP**
**to**
**National Instrument 81-102 ~~*Mutual*~~*Investment Funds***

## PART 1 PURPOSE

**1.1 Purpose -** The purpose of this Policy is to state the views of the Canadian securities regulatory authorities on various matters relating to National Instrument 81-102 ~~*Mutual*~~*Investment Funds* (the "Instrument"), including

(a) the interpretation of various terms used in the Instrument;

(b) recommendations concerning the operating procedures that the Canadian securities regulatory authorities suggest that ~~mutual~~investment funds subject to the Instrument, or persons performing services for ~~mutual~~the investment funds, adopt to ensure compliance with the Instrument;

(c) discussions of circumstances in which the Canadian securities regulatory authorities have granted relief from particular requirements of National Policy Statement No. 39 ("NP39"), the predecessor to the Instrument, and the conditions that those authorities imposed in granting that relief; and

(d) recommendations concerning applications for approvals required under, or relief from, provisions of the Instrument.

## PART 2 COMMENTS ON DEFINITIONS CONTAINED IN THE INSTRUMENT

**2.1 "asset allocation service" -** The definition of "asset allocation service" in the Instrument includes only specific administrative services in which an investment in mutual funds subject to the Instrument is an integral part. The Canadian securities regulatory authorities do not view this definition as including general investment services such as discretionary portfolio management that may, but are not required to, invest in mutual funds subject to this Instrument.

**2.2 "cash equivalent" -** The definition of "cash equivalent" in the Instrument includes certain evidences of indebtedness of Canadian financial institutions. This includes banker's acceptances.

**2.3 "clearing corporation" -** The definition of "clearing corporation" in the Instrument includes both incorporated and unincorporated organizations, which may, but need not, be part of an options or futures exchange.

**2.4 "debt-like security" -** Paragraph (b) of the definition of "debt-like security" in the Instrument provides that the value of the component of an instrument that is not linked to the underlying interest of the instrument must account for less than 80~~ percent~~% of the aggregate value of the instrument in order that the instrument be considered a debt-like security. The Canadian securities regulatory authorities have structured this provision in this manner to emphasize what they consider the most appropriate manner to value these

instruments. That is, one should first value the component of the instrument that is not linked to the underlying interest, as this is often much easier to value than the component that is linked to the underlying interest. The Canadian securities regulatory authorities recognize the valuation difficulties that can arise if one attempts to value, by itself, the component of an instrument that is linked to the underlying interest.

**2.4.1** ~~**Predecessor terms**~~ **"designated rating" and "designated rating organization"** – ~~We~~The Canadian securities regulatory authorities recognize there are existing contracts that use the predecessor terms "approved credit rating", "approved rating" and "approved credit rating organization". The content of the new definitions "designated rating" and "designated rating organization" is substantially the same as the content of their respective predecessor terms, only the terminology has changed. Therefore, it is reasonable to interpret the predecessor terms as having the same meaning as the definition of "designated rating" and "designated rating organization" in ~~NI 81-102,~~the Instrument, as applicable.

**2.5 "fundamental investment objectives"**

(1) The definition of "fundamental investment objectives" is relevant in connection with paragraph 5.1(1)(c) of the Instrument, which requires that the approval of securityholders of ~~a mutual~~an investment fund be obtained before any change is made to the fundamental investment objectives of the ~~mutual~~investment fund. The fundamental investment objectives of ~~a mutual~~an investment fund are required to be disclosed in a ~~simplified~~ prospectus under Part B of Form 81-101F1 *Contents of Simplified Prospectus* or under the requirements of Form 41-101F2 *Information Required in an Investment Fund Prospectus*. The definition of "fundamental investment objectives" contained in the Instrument uses the language contained in the disclosure requirements of ~~Part B of~~ Form 81-101F~~1~~,1 and Form 41-101F2, and the definition should be read to include the matters that would have to be disclosed under the Item of ~~Part B of~~ the applicable form concerning "Fundamental Investment Objectives". Accordingly, any change to the ~~mutual~~investment fund requiring a change to that disclosure would trigger the requirement for securityholder approval under paragraph 5.1(1)(c) of the Instrument.

(2) Form 41-101F2 and Part B of Form 81-101F1 ~~sets~~set out, among other things, the obligation that ~~a mutual~~an investment fund disclose in a ~~simplified~~ prospectus both its fundamental investment objectives and its investment strategies. The matters required to be disclosed under the Item of ~~Part B of~~ the applicable form relating to "Investment Strategies" are not "fundamental investment objectives" under the Instrument.

(3) Generally speaking, the "fundamental investment objectives" of ~~a mutual~~an investment fund are those attributes that define its fundamental nature. For example, ~~mutual~~investment funds that are guaranteed or insured, or that pursue a highly specific investment approach such as index funds or derivative funds, may be defined by those attributes. Often the manner in which ~~a mutual~~an investment fund is marketed will provide evidence as to its fundamental nature; ~~a mutual~~an investment fund whose advertisements emphasize, for instance, that investments are guaranteed likely will have the existence of a guarantee as a "fundamental investment objective".

(4) **[Deleted]**

(5) One component of the definition of "fundamental investment objectives" is that those objectives distinguish ~~a mutual~~an investment fund from other ~~mutual~~investment funds. This component does not imply that the fundamental investment objectives for each ~~mutual~~investment fund must be unique. Two or more ~~mutual~~investment funds can have identical fundamental investment objectives.

**2.6 "guaranteed mortgage" -** A mortgage insured under the *National Housing Act* (Canada) or similar provincial statutes is a "guaranteed mortgage" for the purposes of the Instrument.

**2.7 "hedging"**

(1) One component of the definition of "hedging" is the requirement that hedging transactions result in a "high degree of negative correlation between changes in the value of the investment or position, or group of investments or positions, being hedged and changes in the value of the instrument or instruments with which the investment or position is hedged". The Canadian securities regulatory authorities are of the view that there need not be complete congruence between the hedging instrument or instruments and the position or positions being hedged if it is reasonable to regard the one as a hedging instrument for the other, taking into account the closeness of the relationship between fluctuations in the price of the two and the availability and pricing of hedging instruments.

(2) The definition of "hedging" includes a reference to the "maintaining" of the position resulting from a hedging transaction or series of hedging transactions. The inclusion of this component in the definition requires ~~a mutual~~an investment fund to ensure that a transaction continues to offset specific risks of the ~~mutual~~investment fund in order that the transaction be considered a "hedging" transaction under the Instrument; if the "hedging" position ceases to provide an offset to an existing risk of ~~a mutual~~an investment fund, then that position is no longer a hedging position under the Instrument, and can be held by the ~~mutual~~investment fund only in compliance with the specified derivatives rules of the Instrument that apply to non-hedging positions. The component of the definition that requires the "maintaining" of a hedge position does not mean that ~~a mutual~~an investment fund is locked into a specified derivatives position; it simply means that the specified derivatives position must continue to satisfy the definition of "hedging" in order to receive hedging treatment under the Instrument.

(3) Paragraph (b) of the definition of "hedging" has been included to ensure that currency cross hedging continues to be permitted under the Instrument. Currency cross hedging is the substitution of currency risk associated with one currency for currency risk associated with another currency, if neither currency is a currency in which the ~~mutual~~investment fund determines its net asset value per security and the aggregate amount of currency risk to which the ~~mutual~~investment fund is exposed is not increased by the substitution. Currency cross hedging is to be distinguished from currency hedging, as that term is ordinarily used. Ordinary currency hedging, in the context of ~~mutual~~investment funds, would involve replacing the ~~mutual~~investment fund's exposure to a "non-net asset value" currency with exposure to a currency in which the ~~mutual~~investment fund calculates its net asset value per security. That type of currency hedging is subject to paragraph (a) of the definition of "hedging".

**2.8** **"illiquid asset" -** A portfolio asset of a mutual fund that meets the definition of "illiquid asset" will be an illiquid asset even if a person or company, including the manager or the portfolio adviser of a mutual fund or a partner, director or officer of the manager or portfolio adviser of a mutual fund or any of their respective associates or affiliates, has agreed to purchase the asset from the mutual fund. That type of agreement does not affect the words of the definition, which defines "illiquid asset" in terms of whether that asset cannot be readily disposed of through market facilities on which public quotations in common use are widely available.

**2.9** **"manager" -** The definition of "manager" under the Instrument only applies to the person or company that actually directs the business of the ~~mutual~~investment fund, and does not apply to others, such as trustees, that do not actually carry out this function. Also, a "manager" would not include a person or company whose duties are limited to acting as a service provider to the ~~mutual~~investment fund, such as a portfolio adviser.

**2.10** **"option" -** The definition of "option" includes warrants, whether or not the warrants are listed on a stock exchange or quoted on an over-the-counter market.

**2.11** **"performance data" -** The term "performance data" includes data on an aspect of the investment performance of ~~a mutual~~an investment fund, an asset allocation service, security, index or benchmark. This could include data concerning return, volatility or yield. The Canadian securities regulatory authorities note that the term "performance data" would not include a rating prepared by an independent organization reflecting the credit quality, rather than the performance, of, for instance, ~~a mutual~~an investment fund's portfolio or the participating funds of an asset allocation service.

**2.12** **"public medium" -** An "advertisement" is defined in the Instrument to mean a sales communication that is published or designed for use on or through a "public medium". The Canadian securities regulatory authorities interpret the term "public medium" to include print, television, radio, tape recordings, video tapes, computer disks, the Internet, displays, signs, billboards, motion pictures and telephones.

**2.13 "purchase"**

(1) The definition of a "purchase", in connection with the acquisition of a portfolio asset by ~~a mutual~~an investment fund, means an acquisition that is the result of a decision made and action taken by the ~~mutual~~investment fund.

(2) The Canadian securities regulatory authorities consider that the following types of transactions would generally be purchases of a security by ~~a mutual~~an investment fund under the definition:

1. The ~~mutual~~investment fund effects an ordinary purchase of the security, or, at its option, exercises, converts or exchanges a convertible security held by it.

2. The ~~mutual~~investment fund receives the security as consideration for a security tendered by the ~~mutual~~investment fund into a take-over bid.

3. The ~~mutual~~investment fund receives the security as the result of a merger, amalgamation, plan of arrangement or other reorganization for which the ~~mutual~~investment fund voted in favour.

4. The ~~mutual~~investment fund receives the security as a result of the automatic exercise of an exchange or conversion right attached to another security held by the ~~mutual~~investment fund in accordance with the terms of that other security or the exercise of that exchange or conversion right at the option of the ~~mutual~~investment fund.

5. (a) The ~~mutual~~investment fund has become legally entitled to dispose of the collateral held by it under a securities loan or repurchase agreement and to apply proceeds of realization to satisfy the obligations of the counterparty of the ~~mutual~~investment fund under the transaction, and

(b) sufficient time has passed after the event described in paragraph (a) to enable the ~~mutual~~investment fund to sell the collateral in a manner that maintains an orderly market and that permits the preservation of the best value for the ~~mutual~~investment fund.

(3) The Canadian securities regulatory authorities consider that the following types of transactions would generally not be purchases of a security by ~~a mutual~~an investment fund under the definition:

1. The ~~mutual~~investment fund receives the security as a result of a compulsory acquisition by an issuer following completion of a successful take-over bid.

2. The ~~mutual~~investment fund receives the security as a result of a merger, amalgamation, plan of arrangement or other reorganization that the ~~mutual~~investment fund voted against.

3. The ~~mutual~~investment fund receives the security as the result of the exercise of an exchange or conversion right attached to a security held by the ~~mutual~~investment fund made at the discretion of the issuer of the security held by the ~~mutual~~investment fund.

4. The ~~mutual~~investment fund declines to tender into an issuer bid, even though its decision is likely to result in an increase in its percentage holdings of a security beyond what the ~~mutual~~investment fund would be permitted under the Instrument to purchase.

**2.14 "restricted security" -** A special warrant is a form of restricted security and, accordingly, the provisions of the Instrument applying to restricted securities apply to special warrants.

**2.15 "sales communication"**

(1) The term "sales communication" ~~refers to~~includes a communication ~~to~~by an investment fund to (i) a securityholder of ~~a mutual~~the investment fund and ~~to~~(ii) a person or company that is not a securityholder if the purpose of the communication is to induce the purchase of securities of the ~~mutual~~investment fund. A sales communication therefore does not include a communication solely between ~~a mutual~~an investment fund or its promoter, manager, principal distributor or portfolio adviser and a participating dealer, or between the principal distributor or a participating dealer and its registered salespersons, that is indicated to be internal or confidential and that is not designed to be passed on by any

principal distributor, participating dealer or registered salesperson to any securityholder of, or potential investor in, the ~~mutual~~investment fund. In the view of the Canadian securities regulatory authorities, if a communication of that type were so passed on by the principal distributor, participating dealer or registered salesperson, the communication would be a sales communication made by the party passing on the communication if the recipient of the communication were a securityholder of the ~~mutual~~investment fund or if the intent of the principal distributor, participating dealer or registered salesperson in passing on the communication were to induce the purchase of securities of the ~~mutual~~investment fund.

(2) The term "sales communication" is defined in the Instrument such that the communication need not be in writing and includes any oral communication. The Canadian securities regulatory authorities are of the view that the requirements in the Instrument pertaining to sales communications would apply to statements made at an investor conference to securityholders or to others to induce the purchase of securities of the ~~mutual~~investment fund.

(3) The Canadian securities regulatory authorities are of the view that image advertisements that are intended to promote a corporate identity or the expertise of ~~a mutual~~an investment fund manager fall outside the definition of "sales communication". However, an advertisement or other communication that refers to a specific ~~mutual~~investment fund or funds or promotes any particular investment portfolio or strategy would be a sales communication and therefore be required to include warnings of the type now described in section 15.4 of the Instrument.

(4) ~~Paragraph~~In the case of an investment fund, paragraph (b) of the definition of a "sales communication" in the Instrument excludes sales communications contained in certain documents that the ~~mutual~~investment fund is required to prepare, including audited or unaudited financial statements, statements of account and confirmations of trade. The Canadian securities regulatory authorities are of the view that if information is contained in these types of documents that is not required to be included by securities legislation, any such additional material is not excluded by paragraph (b) of the definition of sales communication and may, therefore, constitute a sales communication if the additional material otherwise falls within the definition of that term in the Instrument.

**2.16 "specified derivative"**

(1) The term "specified derivative" is defined to mean an instrument, agreement or security, the market price, value or payment obligations of which are derived from, referenced to or based on an underlying interest. Certain instruments, agreements or securities that would otherwise be specified derivatives within the meaning of the definition are then excluded from the definition for purposes of the Instrument.

(2) Because of the broad ambit of the lead-in language to the definition, it is impossible to list every instrument, agreement or security that might be caught by that lead-in language but that is not considered to be a derivative in any normal commercial sense of that term. The Canadian securities regulatory authorities consider conventional floating rate debt instruments, ~~securities of a mutual fund or commodity pool, non-redeemable~~ securities of an investment fund, American depositary receipts and instalment receipts generally to be within this category, and generally will not treat those instruments as specified derivatives in administering the Instrument.

(3) However, the Canadian securities regulatory authorities note that these general exclusions may not be applicable in cases in which a mutual fund invests in one of the vehicles described in subsection (2) with the result that the mutual fund obtains or increases exposure to a particular underlying interest in excess of the limit set out in section 2.1 of the Instrument. In such circumstances, the Canadian securities regulatory authorities are likely to consider that instrument a specified derivative under the Instrument.

**2.17 "standardized future" -** The definition of "standardized future" refers to an agreement traded on a futures exchange. This type of agreement is called a "futures contract" in the legislation of some jurisdictions, and an "exchange contract" in the legislation of some other jurisdictions (such as British Columbia and Alberta). The term "standardized future" is used in the Instrument to refer to these types of contracts, to avoid conflict with existing local definitions.

**2.18 "swap"** - The Canadian securities regulatory authorities are of the view that the definition of a swap in the Instrument would include conventional interest rate and currency swaps, as well as equity swaps.

## PART 3 INVESTMENTS

### 3.1 Evidences of Indebtedness of Foreign Governments and Supranational Agencies

(1) Section 2.1 of the Instrument prohibits mutual funds from purchasing a security of an issuer, other than a government security or a security issued by a clearing corporation if, immediately after the purchase, more than 10 ~~percent~~% of their net asset value would be invested in securities of that issuer. The term "government security" is defined in the Instrument as an evidence of indebtedness that is issued, or fully and unconditionally guaranteed as to principal and interest, by any of the government of Canada, the government of a jurisdiction or the government of the United States of America.

(2) Before the Instrument came into force, the Canadian securities regulatory authorities granted relief from the predecessor provision of NP39 to a number of international bond funds in order to permit those mutual funds to pursue their fundamental investment objectives with greater flexibility.

(3) The Canadian securities regulatory authorities will continue to consider applications for relief from section 2.1 of the Instrument if the mutual fund making the application demonstrates that the relief will better enable the mutual fund to meet its fundamental investment objectives. This relief will ordinarily be restricted to international bond funds.

(4) The relief from paragraph 2.04(1)(a) of NP39, which is replaced by section 2.1 of the Instrument, that has been provided to a mutual fund has generally been limited to the following circumstances:

1. The mutual fund has been permitted to invest up to 20 ~~percent~~% of its net asset value in evidences of indebtedness of any one issuer if those evidences of indebtedness are issued, or guaranteed fully as to principal and interest, by supranational agencies or governments other than the government of Canada, the government of a jurisdiction or the government of the United States of America and are rated "AA" by Standard & Poor's Rating Services (Canada) or

its DRO affiliate, or have an equivalent rating by one or more other designated rating organizations or their DRO affiliates.

2. The mutual fund has been permitted to invest up to 35 ~~percent~~% of its net asset value in evidences of indebtedness of any one issuer, if those securities are issued by issuers described in paragraph 1 and are rated "AAA" by Standard & Poor's Rating Services (Canada) or its DRO affiliate, or have an equivalent rating by one or more other designated rating organizations or their DRO affiliates.

(5) It is noted that the relief described in paragraphs 3.1(4)1 and 2 cannot be combined for one issuer.

(6) **[Deleted]**

(7) The relief from paragraph 2.04(1)(a) of NP39, which is replaced by section 2.1 of the Instrument, has generally been provided only if

(a) the securities that may be purchased under the relief referred to in subsection (4) are traded on a mature and liquid market;

(b) the acquisition of the evidences of indebtedness by the mutual fund is consistent with its fundamental investment objectives;

(c) the prospectus or simplified prospectus of the mutual fund disclosed the additional risks associated with the concentration of the net asset value of the mutual fund in securities of fewer issuers, such as the potential additional exposure to the risk of default of the issuer in which the fund has so invested and the risks, including foreign exchange risks, of investing in the country in which that issuer is located; and

(d) the prospectus or simplified prospectus of the mutual fund gave details of the relief provided by the Canadian securities regulatory authorities, including the conditions imposed and the type of securities covered by the exemption.

**3.2 Index Mutual Funds**

(1) An "index mutual fund" is defined in section 1.1 of the Instrument as a mutual fund that has adopted fundamental investment objectives that require it to

(a) hold the securities that are included in a permitted index or permitted indices of the mutual fund in substantially the same proportion as those securities are reflected in that permitted index or permitted indices; or

(b) invest in a manner that causes the mutual fund to replicate the performance of that permitted index or those permitted indices.

(2) This definition includes only mutual funds whose entire portfolio is invested in accordance with one or more permitted indices. The ~~CSA recognizes~~Canadian securities regulatory authorities recognize that there may be mutual funds that invest part of their

portfolio in accordance with a permitted index or indices, with a remaining part of the portfolio being actively managed. Those mutual funds cannot avail themselves of the relief provided by subsection 2.1(5) of the Instrument, which provides relief from the "10 ~~percent~~% rule" contained in subsection 2.1(1) of the Instrument, because they are not "index mutual funds". The ~~CSA~~Canadian securities regulatory authorities acknowledge that there may be circumstances in which the principles behind the relief contained in subsection 2.1(5) of the Instrument is also applicable to "partially-indexed" mutual funds. Therefore, the ~~CSA~~Canadian securities regulatory authorities will consider applications from those types of mutual funds for relief analogous to that provided by subsection 2.1(5) of the Instrument.

(3) It is noted that the manager of an index mutual fund may make a decision to base all or some of the investments of the mutual fund on a different permitted index than a permitted index previously used. This decision might be made for investment reasons or because that index no longer satisfies the definition of "permitted index" in the Instrument. It is noted that this decision by the manager will be considered by the Canadian securities regulatory authorities generally to constitute a change of fundamental investment objectives, thereby requiring securityholder approval under paragraph 5.1(1)(c) of the Instrument. In addition, this decision would also constitute a material change for the mutual fund, thereby requiring an amendment to the prospectus of the mutual fund and the issuing of a press release under Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.

**3.2.1 Control Restrictions –** An investment fund generally holds a passive stake in the businesses in which it invests; that is, an investment fund generally does not seek to obtain control of, or become involved in, the management of investee companies. This key restriction on the type of investment activities that may be undertaken by an investment fund is codified in section 2.2 of the Instrument. Exceptions to this are labour sponsored or venture capital funds, where some degree of involvement in the management of the investees is generally an integral part of the investment strategy.

In determining whether an investment fund exercises control over, or is involved in the management of, an investee company, for the purposes of compliance with section 2.2 of the Instrument, the Canadian securities regulatory authorities will generally consider indicators, including the following:

(a) any right of the investment fund to appoint directors, or observers, of the board of the investee company;

(b) any right of the investment fund to restrict the management of the investee company, or to approve or veto decisions made by the management of the investee company;

(c) any right of the investment fund to restrict the transfer of securities by other securityholders of the investee company.

The Canadian securities regulatory authorities will take the above factors into consideration when considering the nature of an investment fund's investment in an issuer to determine whether the investment fund is in compliance with section 2.2 of the Instrument. The Canadian securities regulatory authorities will also refer to the

applicable accounting standards in determining whether an investment fund is exercising control over an issuer.

**3.3 Special Warrants** ~~A mutual~~ An investment fund is required by subsection 2.2(3) of the Instrument to assume the conversion of each special warrant it holds. This requirement is imposed because the nature of a special warrant is such that there is a high degree of likelihood that its conversion feature will be exercised shortly after its issuance, once a prospectus relating to the underlying security has been filed.

### 3.3.1 Illiquid assets

(1) Although section 2.4 of the Instrument does not apply to non-redeemable investment funds, the Canadian securities regulatory authorities expect the manager of an investment fund (whether a mutual fund or a non-redeemable investment fund) to establish an effective liquidity risk management policy that considers the liquidity of the types of assets in which the investment fund will be invested, and the fund's obligations and other liabilities (for example, meeting redemption requests, or margin calls from derivative counterparties). Appropriate internal limits for the investment fund's liquidity needs, in line with its investment strategies, should be established.

(2) As portfolio assets may become illiquid when market conditions change, the Canadian securities regulatory authorities are of the view that the manager should regularly measure, monitor and manage the liquidity of the investment fund's portfolio assets, keeping in mind the time to liquidate each portfolio asset, the price the asset may be sold at and the pattern of redemption requests.

(3) Furthermore, the Canadian securities regulatory authorities are of the view that illiquid assets are generally more difficult to value, for the purposes of calculating an investment fund's net asset value, than assets which are liquid. As a result, where a non-redeemable investment fund has a large proportion of its assets invested in illiquid assets, this raises concerns about the accuracy of the fund's net asset value and the amount of any fees calculated with reference to net asset value. Accordingly, staff of the Canadian securities regulatory authorities may raise comments or questions in the course of their reviews of the prospectuses or continuous disclosure documents of non-redeemable investment funds where such funds have a significant proportion of their assets invested in illiquid assets.

**3.4 Investment in Other ~~Mutual~~Investment Funds**

(1) **[Deleted]**

(2) Subsection 2.5(7) of the Instrument provides that certain investment restrictions and reporting requirements do not apply to investments in other ~~mutual~~investment funds made in accordance with section 2.5 of the Instrument. In some cases, ~~a mutual~~an investment fund's investments in other ~~mutual~~investment funds will be exempt from the requirements of section 2.5 of the Instrument because of an exemption granted by the regulator or securities regulatory authority. In these cases, assuming the ~~mutual~~investment fund complies with the terms of the exemption, its investments in other ~~mutual~~investment funds would be considered to have been made in accordance with section 2.5 of the Instrument. It is also noted that subsection 2.5(7) of the Instrument applies only with

respect to ~~a mutual~~an investment fund's investments in other ~~mutual~~investment funds, and not for any other investment or transaction.

**3.5 Instalments of Purchase Price -** Paragraph 2.6(d) of the Instrument prohibits ~~a mutual~~an investment fund from purchasing a security, other than a specified derivative, that by its terms may require the ~~mutual~~investment fund to make a contribution in addition to the payment of the purchase price. This prohibition does not extend to the purchase of securities that are paid for on an instalment basis in which the total purchase price and the amounts of all instalments are fixed at the time the first instalment is made.

**3.6 Purchase of Evidences of Indebtedness -** Paragraph 2.6(f) of the Instrument prohibits ~~a mutual~~an investment fund from lending either cash or a portfolio asset other than cash. The Canadian securities regulatory authorities are of the view that the purchase of an evidence of indebtedness, such as a bond or debenture, a loan participation or loan syndication as permitted by paragraph 2.3(1)(i) or (2)(c) of the Instrument, or the purchase of a preferred share that is treated as debt for accounting purposes, does not constitute the lending of cash or a portfolio asset.

**3.7 Securities Lending, Repurchase and Reverse Repurchase Transactions**

(1) Section 2.12, 2.13 and 2.14 of the Instrument each contains a number of conditions that must be satisfied in order that ~~a mutual~~an investment fund may enter into a securities lending, repurchase or reverse repurchase transaction in compliance with the Instrument. It is expected that, in addition to satisfying these conditions, the manager on behalf of the ~~mutual~~investment fund, in co-ordination with an agent, will ensure that the documentation evidencing these types of transactions contains customary provisions to protect the ~~mutual~~investment fund and to document the transaction properly. Among other things, these provisions would normally include

(a) a definition of an "event of default" under the agreement, which would include failure to deliver cash or securities, or to promptly pay to the ~~mutual~~investment fund amounts equal to dividends and interest paid, and distributions made, on loaned or sold securities, as required by the agreement;

(b) provisions giving non-defaulting parties rights of termination, rights to sell the collateral, rights to purchase identical securities to replace the loaned securities and legal rights of set-off in connection with their obligations if an event of default occurs; and

(c) provisions that deal with, if an event of default occurs, how the value of collateral or securities held by the non-defaulting party that is in excess of the amount owed by the defaulting party will be treated.

(2) Section 2.12, 2.13 and 2.14 of the Instrument each imposes a requirement that ~~a mutual~~an investment fund that has entered into a securities lending, repurchase or reverse repurchase transaction hold cash or securities of at least 102~~ percent~~% of the market value of the securities or cash held by the ~~mutual~~investment fund's counterparty under the transaction. It is noted that the 102~~ percent~~% requirement is a minimum requirement, and that it may be appropriate for the manager of ~~a mutual~~an investment fund, or the agent acting on behalf of the ~~mutual~~investment fund, to negotiate the holding of a greater amount of cash or securities if necessary to protect the interests of the ~~mutual~~investment

fund in a particular transaction, having regard to the level of risk for the ~~mutual~~investment fund in the transaction. In addition, if the recognized best practices for a particular type of transaction in a particular market calls for a higher level of collateralization than 102~~ percent~~%, it is expected that, absent special circumstances, the manager or the agent would ensure that its arrangements reflect the relevant best practices for that transaction.

(3) Paragraph 3 of subsection 2.12(1) of the Instrument refers to securities lending transactions in terms of securities that are "loaned" by ~~a mutual~~an investment fund in exchange for collateral. Some securities lending transactions are documented so that title to the "loaned" securities is transferred from the "lender" to the "borrower". The Canadian securities regulatory authorities do not consider this fact as sufficient to disqualify those transactions as securities loan transactions within the meaning of the Instrument, so long as the transaction is in fact substantively a loan. References throughout the Instrument to "loaned" securities, and similar references, should be read to include securities "transferred" under a securities lending transaction.

(4) ~~Paragraph~~Subparagraph 6(d) of subsection 2.12(1) permits the use of irrevocable letters of credit as collateral in securities lending transactions. The Canadian securities regulatory authorities believe that, at a minimum, the prudent use of letters of credit will involve the following arrangements:

(a) the ~~mutual~~investment fund should be allowed to draw down any amount of the letter of credit at any time by presenting its sight draft and certifying that the borrower is in default of its obligations under the securities lending agreement, and the amount capable of being drawn down would represent the current market value of the outstanding loaned securities or the amount required to cure any other borrower default; and

(b) the letter of credit should be structured so that the lender may draw down, on the date immediately preceding its expiration date, an amount equal to the current market value of all outstanding loaned securities on that date.

(5) Paragraph 9 of subsection 2.12(1) and paragraph 8 of subsection 2.13(1) of the Instrument each provides that the agreement under which ~~a mutual~~an investment fund enters into a securities lending or repurchase transaction include a provision requiring the ~~mutual~~investment fund's counterparty to promptly pay to the ~~mutual~~investment fund, among other things, distributions made on the securities loaned or sold in the transaction. In this context, the term "distributions" should be read broadly to include all payments or distributions of any type made on the underlying securities, including, without limitation, distributions of property, stock dividends, securities received as the result of splits, all rights to purchase additional securities and full or partial redemption proceeds. This extended meaning conforms to the meaning given the term "distributions" in several standard forms of securities loan agreements widely used in the securities lending and repurchase markets.

(6) ~~Section~~Sections 2.12, 2.13 and 2.14 of the Instrument each make reference to the "delivery" and "holding" of securities or collateral by the ~~mutual~~investment fund. The Canadian securities regulatory authorities note that these terms will include the delivery or holding by an agent for ~~a mutual~~an investment fund. In addition, the Canadian securities regulatory authorities recognize that under ordinary market practice, agents

pool collateral for securities lending/repurchase clients; this pooling of itself is not considered a violation of the Instrument.

(7) ~~Section~~Sections 2.12, 2.13 and 2.14 of the Instrument each require that the securities involved in a securities lending, repurchase or reverse repurchase transaction be marked to market daily and adjusted as required daily. It is recognized that market practice often involves an agent marking to market a portfolio at the end of a business day, and effecting the necessary adjustments to a portfolio on the next business day. So long as each action occurs on each business day, as required by the Instrument, this market practice is not a breach of the Instrument.

(8) As noted in subsection (7), the Instrument requires the daily marking to market of the securities involved in a securities lending, repurchase or reverse repurchase transaction. The valuation principles used in this marking to market may be those generally used by the agent acting for the ~~mutual~~investment fund, even if those principles deviate from the principles that are used by the ~~mutual~~investment fund in valuing its portfolio assets for the purposes of calculating net asset value.

(9) Paragraph 6 of subsection 2.13(1) of the Instrument imposes a requirement concerning the delivery of sales proceeds to the ~~mutual~~investment fund equal to 102~~ per cent~~% of the market value of the securities sold in the transaction. It is noted that accrued interest on the sold securities should be included in the calculation of the market value of those securities.

(10) Section 2.15 of the Instrument imposes the obligation on a manager of ~~a mutual~~an investment fund to appoint an agent or agents to administer its securities lending and repurchase transactions, and makes optional the ability of a manager to appoint an agent or agents to administer its reverse repurchase transactions. A manager that appoints more than one agent to carry out these functions may allocate responsibility as it considers best. For instance, it may be appropriate that one agent be responsible for domestic transactions, with one or more agents responsible for offshore transactions. Managers should ensure that the various requirements of sections 2.15 and 2.16 of the Instrument are satisfied for all agents.

(11) It is noted that the responsibilities of an agent appointed under section 2.15 of the Instrument include all aspects of acting on behalf of ~~a mutual~~an investment fund in connection with securities lending, repurchase or reverse repurchase agreements. This includes acting in connection with the reinvestment of collateral or securities held during the life of a transaction.

(12) Subsection 2.15(3) of the Instrument requires that an agent appointed by ~~a mutual~~an investment fund to administer its securities lending, repurchase or reverse repurchase transactions shall be a custodian or sub-custodian of the ~~mutual~~investment fund. It is noted that the provisions of Part 6 of the Instrument generally apply to the agent in connection with its activities relating to securities lending, repurchase or reverse repurchase transactions. The agent must have been appointed as custodian or sub-custodian in accordance with section 6.1, and must satisfy the other requirements of Part 6 in carrying out its responsibilities.

(13) Subsection 2.15(~~5~~4) of the Instrument provides that the manager of ~~a mutual~~an investment fund ~~shall~~must not authorize an agent to enter into securities lending,

repurchase or, if applicable, reverse repurchase transactions on behalf of the ~~mutual~~investment fund unless there is a written agreement between the agent, the manager and the ~~mutual~~investment fund that deals with certain prescribed matters. Subsection (~~5~~4) requires that the manager and the ~~mutual~~investment fund, in the agreement, provide instructions to the agent on the parameters to be followed in entering into the type of transaction to which the agreement pertains. The parameters would normally include

(a) details on the types of transactions that may be entered into by the ~~mutual~~investment fund;

(b) types of portfolio assets of the ~~mutual~~investment fund to be used in the transaction;

(c) specification of maximum transaction size, or aggregate amount of assets that may be committed to transactions at any one time;

(d) specification of permitted counterparties;

(e) any specific requirements regarding collateralization, including minimum requirements as to amount and diversification of collateralization, and details on the nature of the collateral that may be accepted by the ~~mutual~~investment fund;

(f) directions and an outline of responsibilities for the reinvestment of cash collateral received by the ~~mutual~~investment fund under the program to ensure that proper levels of liquidity are maintained at all times; and

(g) duties and obligations on the agent to take action to obtain payment by a borrower of any amounts owed by the borrower.

(14) The definition of "cash cover" contained in section 1.1 of the Instrument requires that the portfolio assets used for cash cover not be "allocated for specific purposes". Securities loaned by a mutual fund in a securities lending transaction have been allocated for specific purposes and therefore cannot be used as cash cover by the mutual fund for its specified derivatives obligations.

(15) ~~A mutual~~An investment fund sometimes needs to vote securities held by it in order to protect its interests in connection with corporate transactions or developments relating to the issuers of the securities. The manager and the portfolio adviser of ~~a mutual~~an investment fund, or the agent of the ~~mutual~~investment fund administering a securities lending program on behalf of the ~~mutual~~investment fund, should monitor corporate developments relating to securities that are loaned by the ~~mutual~~investment fund in securities lending transactions, and take all necessary steps to ensure that the ~~mutual~~investment fund can exercise a right to vote the securities when necessary. This may be done by way of a termination of a securities lending transaction and recall of loaned securities, as described in paragraph 11 of subsection 2.12(1) of the Instrument.

(16) As part of the prudent management of a securities lending, repurchase or reverse repurchase program, managers of ~~mutual~~investment funds, together with their agents, should ensure that transfers of securities in connection with those programs are effected in a secure manner over an organized market or settlement system. For foreign securities,

this may entail ensuring that securities are cleared through central depositories. ~~Mutual~~Investment funds and their agents should pay close attention to settlement arrangements when entering into securities lending, repurchase and reverse repurchase transactions.

**3.7.1 Money Market Funds -** Section 2.18 of the Instrument imposes daily and weekly liquidity requirements on money market funds. Specifically, money market funds must keep 5% of their assets invested in cash or readily convertible into cash within one day, and 15% of their assets invested in cash or readily convertible into cash within one week. Assets that are "readily convertible to cash" would generally be short-term, highly liquid investments that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value. Such assets can be sold in the ordinary course of business within one business day (in the case of the daily liquidity requirement) or within five business days (in the case of the weekly liquidity requirement) at approximately the value ascribed to them by the money market fund. The ~~CSA~~Canadian securities regulatory authorities note that the securities do not have to mature within the one and five business day periods. For example, direct obligations of the Canadian or U.S. government, or of a provincial government, that mature after one or five business days but that can be readily converted to cash within one or five business days, would likely be eligible for the 5% and 15% liquidity requirements.

**3.8 Prohibited Investments**

(1) Subsection 4.1(4) of the Instrument permits a dealer managed ~~mutual~~investment fund to make an investment otherwise prohibited by subsection 4.1(1) of the Instrument and the corresponding provisions in securities legislation referred to in Appendix C to ~~NI 81-102~~the Instrument if the independent review committee of the dealer managed ~~mutual~~investment fund has approved the transaction under subsection 5.2(2) of ~~NI 81-107. The CSA~~National Instrument 81-107 *Independent Review Committee for Investment Funds* ("NI 81-107"). The Canadian securities regulatory authorities expect the independent review committee may contemplate giving its approval as a standing instruction, as contemplated in section 5.4 of NI 81-107.

(2) Subsection 4.3(2) of the Instrument permits ~~a mutual~~an investment fund to purchase a class of debt securities from, or sell a class of debt securities to, another ~~mutual~~investment fund managed by the same manager or an affiliate of the manager where the price payable for the security is not publicly available, if the independent review committee of the ~~mutual~~investment fund has approved the transaction under subsection 5.2(2) of NI 81-107 and the requirements in section 6.1 of NI 81-107 have been met. The ~~CSA~~Canadian securities regulatory authorities expect the independent review committee may contemplate giving its approval as a standing instruction, as contemplated in section 5.4 of NI 81-107.

(3) In providing its approval under paragraph 4.3(2)~~, the CSA~~ of the Instrument, the Canadian securities regulatory authorities expect the independent review committee to have satisfied itself that the price of the security is fair. It may do this by considering the price quoted on a marketplace (e.g., CanPx or TRACE), or by obtaining a quote from an independent, arm's-length purchaser or seller, immediately before the purchase or sale.

**PART 4 USE OF SPECIFIED DERIVATIVES**

**4.1** **Exercising Options on Futures -** Paragraphs 2.8(1)(d) and (e) of the Instrument prohibit a mutual fund from, among other things, opening and maintaining a position in a standardized future except under the conditions referred to in those paragraphs. Opening and maintaining a position in a standardized future could be effected through the exercise by a mutual fund of an option on futures. Therefore, it should be noted that a mutual fund cannot exercise an option on futures and assume a position in a standardized future unless the applicable provisions of paragraphs 2.8(1)(d) or (e) are satisfied.

**4.2** **Registration Matters -** The Canadian securities regulatory authorities remind industry participants of the following requirements contained in securities legislation:

1. ~~A mutual~~An investment fund may only invest in or use clearing corporation options and over-the-counter options if the portfolio adviser advising with respect to these investments

   (a) is permitted, either by virtue of registration as an adviser under the securities legislation or commodity futures legislation of the jurisdiction in which the portfolio adviser is providing the advice or an exemption from the requirement to be registered, to provide that advice to the ~~mutual~~investment fund under the laws of that jurisdiction; and

   (b) has satisfied all applicable option proficiency requirements of that jurisdiction ~~which, ordinarily, will involve completion of the Canadian Options Course~~.

2. ~~A mutual~~An investment fund may invest in or use futures and options on futures only if the portfolio adviser advising with respect to these investments or uses is registered as an adviser under the securities or commodity futures legislation of the jurisdiction in which the portfolio adviser is providing the advice, if this registration is required in that jurisdiction, and meets the proficiency requirements for advising with respect to futures and options on futures in the jurisdiction.

3. A portfolio adviser of ~~a mutual~~an investment fund that receives advice from a non-resident sub-adviser as contemplated by section 2.10 of the Instrument is not relieved from the registration requirements described in paragraphs 1 and 2.

4. In Ontario, a non-resident sub-adviser is required, under the commodity futures legislation of Ontario, to be registered in Ontario if it provides advice to another portfolio adviser of ~~a mutual~~an investment fund in Ontario concerning the use of standardized futures by the ~~mutual~~investment fund. Section 2.10 of the Instrument does not exempt the non-resident sub-adviser from this requirement. A non-resident sub-adviser should apply for an exemption in Ontario if it wishes to carry out the arrangements contemplated by section 2.10 without being registered in Ontario under that legislation.

**4.3** **Leveraging -** The Instrument is designed to prevent the use of specified derivatives for the purpose of leveraging the assets of the mutual fund. The definition of “hedging” prohibits leveraging with specified derivatives used for hedging purposes. The provisions of subsection 2.8(1) of the Instrument restrict leveraging with specified derivatives used for non-hedging purposes.

**4.4** **Cash Cover** - The definition of "cash cover" in the Instrument prescribes the securities or other portfolio assets that may be used to satisfy the cash cover requirements relating to specified derivatives positions of mutual funds required by Part 2 of the Instrument. The definition of "cash cover" includes various interest-bearing securities; the definition includes interest accrued on those securities, and so mutual funds are able to include accrued interest for purposes of cash cover calculations.

## PART 5 LIABILITY AND INDEMNIFICATION

### 5.1 Liability and Indemnification

(1) Subsection 4.4(1) of the Instrument contains provisions that require that any agreement or declaration of trust under which a person or company acts as manager of ~~a mutual~~an investment fund provide that the manager is responsible for any loss that arises out of the failure of it, and of any person or company retained by it or the ~~mutual~~investment fund to discharge any of the manager's responsibilities to the ~~mutual~~investment fund, to satisfy the standard of care referred to in that section. Subsection 4.4(2) of the Instrument provides that ~~a mutual~~an investment fund ~~shall~~must not relieve the manager from that liability.

(2) The purpose of these provisions is to ensure that the manager remains responsible to the ~~mutual~~investment fund and therefore indirectly to its securityholders for the duty of care that is imposed by the securities legislation of most jurisdictions, and to clarify that the manager is responsible ~~to ensure~~for ensuring that service providers perform to the level of that standard of care. The Instrument does not regulate the contractual relationships between the manager and service providers; whether a manager can seek indemnification from a service provider that fails to satisfy that standard of care is a contractual issue between those parties.

(3) Subsection 4.4(5) of the Instrument provides that section 4.4 does not apply to any losses to ~~a mutual~~an investment fund or securityholder arising out of an action or inaction by a custodian or ~~subcustodian~~sub-custodian or by a director of ~~a mutual~~an investment fund. A separate liability regime is imposed, on custodians or sub-custodians by section 6.6 of the Instrument. Directors are subject to the liability regime imposed by the relevant corporate legislation.

### 5.2 Securities Lending, Repurchase and Reverse Repurchase Transactions

(1) As described in section 5.1, section 4.4 of the Instrument is designed to ensure that the manager of ~~a mutual~~an investment fund is responsible for any loss that arises out of the failure of it, and of any person or company retained by it or the ~~mutual~~investment fund to discharge any of the manager~~'~~'s responsibilities to the ~~mutual~~investment fund, to satisfy the standard of care referred to in that section.

(2) The retention by a manager of an agent under section 2.15 of the Instrument to administer the ~~mutual~~investment fund's securities lending, repurchase or reverse repurchase transactions does not relieve the manager from ultimate responsibility for the administration of those transactions in accordance with the Instrument and in conformity with the standard of care imposed on the manager by statute and required to be imposed on the agent in the relevant agreement by subsection 2.15(~~6~~4) of the Instrument.

(3) ~~Because the agent is required to be a~~Under subsection 2.15(3) of the Instrument, the custodian or sub-custodian of ~~the mutual fund, its~~an investment fund must be the agent appointed to act on behalf of the investment fund to administer securities lending, repurchase or reverse repurchase transactions of the investment fund. The activities of the agent, as custodian or sub-custodian, are not within the responsibility of the manager of the ~~mutual~~investment fund, as provided for in subsection 4.4(5) of the Instrument. However, the activities of the agent, in its role as administering the ~~mutual~~investment funds' securities lending, repurchase or reverse repurchase transactions, are within the ultimate responsibility of the manager, as provided for in subsection 4.4(6) of the Instrument.

## PART 6 SECURITYHOLDER MATTERS

**6.1 Meetings of Securityholders -** Subsection 5.4(1) of the Instrument imposes a requirement that a meeting of securityholders of ~~a mutual~~an investment fund called for the purpose of considering any of the matters referred to in ~~section~~subsection 5.1(1) of the Instrument must be called on notice sent at least 21 days before the date of the meeting. Industry participants are reminded that the provisions of National ~~Policy Statement No. 41,~~Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, or a successor instrument, may apply to any meetings of securityholders of ~~mutual~~investment funds and that those provisions may require that a longer period of notice be given.

**6.2 Limited Liability**

(1) ~~Mutual~~Investment funds generally are structured in a manner that ensures that investors are not exposed to the risk of loss of an amount more than their original investment. This is a very important and essential attribute of ~~mutual~~investment funds.

(2) ~~Mutual~~Investment funds that are structured as corporations do not raise pressing liability problems because of the limited liability regime of corporate statutes.

(3) ~~Mutual~~Investment funds that are structured as limited partnerships may raise some concerns about the loss of limited liability if limited partners participate in the management or control of the partnership. The Canadian securities regulatory authorities encourage managers of ~~mutual~~investment funds that are structured as limited partnerships to consider this issue in connection with the holding of meetings of securityholders, even if required under ~~section~~subsection 5.1(1) of the Instrument. In addition, in the view of the Canadian securities regulatory authorities, all managers of ~~mutual~~investment funds that are structured as limited partnerships should ~~consider whether disclosure and~~include a discussion of this issue ~~should be included~~ as a risk factor in prospectuses.

**6.3 Calculation of Fees**

(1) Paragraph 5.1(1)(a) of the Instrument requires securityholder approval before the basis of the calculation of a fee or expense that is charged to ~~a mutual~~an investment fund is changed in a way that could result in an increase in charges to the ~~mutual~~investment fund. The Canadian securities regulatory authorities note that the phrase "basis of the calculation" includes any increase in the rate at which a particular fee is charged to the ~~mutual~~investment fund.

(2) The ~~CSA~~Canadian securities regulatory authorities are of the view that the requirement of ~~subsection~~paragraph 5.1(1)(a) of the Instrument would not apply in instances where the change to the basis of the calculation is the result of separate individual agreements between the manager of the ~~mutual~~investment fund and individual securityholders of the ~~mutual~~investment fund, and the resulting increase in charges is payable directly or indirectly by those individual securityholders only.

## 6.4. Fund Conversions

(1) For the purposes of subparagraphs 5.1(1)(h)(i), (ii) and (iii) of the Instrument, the Canadian securities regulatory authorities consider that any change that will restructure an investment fund from its original structure requires the prior approval of the securityholders of the investment fund. For example, a non-redeemable investment fund may be designed to convert into a mutual fund on a specified date, or it may be designed to convert into a mutual fund after a specified date if the securities of the investment fund have traded at a specified discount to their net asset value per security for more than a set period of time. In each case, when the event that triggers the conversion occurs, the redemption feature of the securities of the non-redeemable investment fund changes and the securities of the non-redeemable investment fund will typically become redeemable at their net asset value per security daily. This change in the redemption feature of the securities of the investment fund may not be implemented unless securityholder approval has been obtained under subparagraph 5.1(1)(h)(i) of the Instrument. Another example of a change requiring securityholder approval is where an investment fund seeks to obtain control, or become involved in the management, of companies in which it invests, which is inconsistent with the nature of an investment fund. In such a situation, the investment fund would be required to obtain securityholder approval under subparagraph 5.1(1)(h)(iii) of the Instrument, in order to convert into a non-investment fund issuer, before it could become involved in the management of, or exercise control over, investees.

(2) For the purposes of subsection 5.1(2) of the Instrument, the Canadian securities regulatory authorities consider the costs and expenses associated with a change referred to in paragraph 5.1(1)(h) of the Instrument to include costs associated with the securityholder meeting to obtain approval of the change, the costs of preparing and filing a prospectus to commence continuous distribution of securities if the investment fund is converting from a non-redeemable investment fund to a mutual fund in continuous distribution, and brokerage commissions payable as a result of any portfolio realignment necessary to carry out the transaction.

# PART 7 CHANGES

## 7.1 Integrity and Competence of ~~Mutual~~Investment Fund Management Groups

(1) Paragraph 5.5(1)(a) of the Instrument requires that the approval of the securities regulatory authority be obtained before the manager of ~~a mutual~~an investment fund is changed. ~~Subsection~~Paragraph 5.5(~~2~~1)(a.1) of the Instrument contemplates similar approval to a change in control of a manager.

(2) In connection with each of these approvals, applicants are required by section 5.7 of the Instrument to provide information to the securities regulatory authority concerning the

integrity and experience of the persons or companies that are proposed to be involved in, or control, the management of the ~~mutual~~investment fund after the proposed transaction.

(3) The Canadian securities regulatory authorities would generally consider it helpful in their assessment of the integrity and experience of the proposed new management group that will manage ~~a mutual~~an investment fund after a change in manager if the application set out, among any other information the applicant wishes to provide

(a) the name, registered address and principal business activity or the name, residential address and occupation or employment of

(i) if the proposed manager is not a public company, each beneficial owner of securities of each shareholder, partner or limited partner of the proposed manager, and

(ii) if the proposed manager is a public company, each beneficial owner of securities of each shareholder of the proposed manager that is the beneficial holder, directly or indirectly, of more than 10 ~~percent~~% of the outstanding securities of the proposed manager; and

(b) information concerning

(i) if the proposed manager is not a public company, each shareholder, partner or limited partner of the proposed manager,

(ii) if the proposed manager is a public company, each shareholder that is the beneficial holder, directly or indirectly, of more than 10 ~~percent~~% of the outstanding securities of the proposed manager,

(iii) each director and officer of the proposed manager, and

(iv) each proposed director, officer or individual trustee of the ~~mutual~~investment fund.

(4) The Canadian securities regulatory authorities would generally consider it helpful if the information relating to the persons and companies referred to in paragraph (3)(b) included

(a) for a company

(i) its name, registered address and principal business activity,

(ii) the number of securities or partnership units of the proposed manager beneficially owned, directly or indirectly, and

(iii) particulars of any existing or potential conflicts of interest that may arise as a result of the activities of the company and its relationship with the management group of the ~~mutual~~investment fund; and

(b) for an individual

(i) his or her name, birthdate and residential address,

(ii) his or her principal occupation or employment,

(iii) his or her principal occupations or employment during the five years before the date of the application, with a particular emphasis on the individual's experience in the financial services industry,

(iv) the individual's educational background, including information regarding courses successfully taken that relate to the financial services industry,

(v) his or her position and responsibilities with the proposed manager or the controlling shareholders of the proposed manager or the ~~mutual~~investment fund,

(vi) whether he or she is, or within five years before the date of the application has been, a director, officer or promoter of any reporting issuer other than the ~~mutual~~investment fund, and if so, disclosing the names of the reporting issuers and their business purpose, with a particular emphasis on relationships between the individual and other ~~mutual~~investment funds,

(vii) the number of securities or partnership units of the proposed manager beneficially owned, directly or indirectly,

(viii) particulars of any existing or potential conflicts of interest that may arise as a result of the individual's outside business interests and his or her relationship with the management group of the ~~mutual~~investment fund, and

(ix) a description of the individual's relationships to the proposed manager and other service providers to the ~~mutual~~investment fund.

(5) The Canadian securities regulatory authorities would generally consider it helpful in their assessment of the integrity and experience of the persons or companies that are proposed to manage ~~a mutual~~an investment fund after a change of control of the manager, if the application set out, among any other information that applicant wishes to provide, a description of

(a) the proposed corporate ownership of the manager of the ~~mutual~~investment fund after the proposed transaction, indicating for each proposed direct or indirect shareholder of the manager of the ~~mutual~~investment fund the information about that shareholder referred to in subsection (4);

(b) the proposed officers and directors of the manager of the ~~mutual~~investment fund, of the ~~mutual~~investment fund and of each of the proposed controlling shareholders of the ~~mutual~~investment fund, indicating for each individual, the information about that individual referred to in subsection (4);

(c) any anticipated changes to be made to the officers and directors of the manager of the ~~mutual~~investment fund, of the ~~mutual~~investment fund and of each of the proposed controlling shareholders of the ~~mutual~~investment fund that are not set out in paragraph (b); and

(d) the relationship of the members of the proposed controlling shareholders and the other members of the management group to the manager and any other service provider to the ~~mutual~~investment fund.

**7.2 Mergers ~~and Conversions of Mutual~~of Investment Funds -** Subsection 5.6(1) of the Instrument provides that mergers ~~or conversions~~ of ~~mutual~~investment funds may be carried out on the conditions described in that subsection without prior approval of the securities regulatory authority. The Canadian securities regulatory authorities consider that the types of transactions contemplated by subsection 5.6(1) of the Instrument when carried out in accordance with the conditions of that subsection address the fundamental regulatory concerns raised by mergers ~~and conversions of mutual~~of investment funds. Subsection 5.6(1) of the Instrument is designed to facilitate consolidations of ~~mutual~~investment funds within fund families that have similar fundamental investment objectives and strategies and that are operated in a consistent and similar fashion. Since subsection 5.6(1) will be unavailable unless the ~~mutual~~investment funds involved in the transaction have substantially similar fundamental investment objectives and strategies and are operated in a substantially similar fashion, the Canadian securities regulatory authorities do not expect that the portfolios of the consolidating funds will be required to be realigned to any great extent before a merger. If realignment is necessary, the Canadian securities regulatory authorities note that paragraph 5.6(1)(h) of the Instrument provides that none of the costs and expenses associated with the transaction may be borne by the ~~mutual~~investment fund. Brokerage commissions payable as a result of any portfolio realignment necessary to carry out the transaction would, in the view of the Canadian securities regulatory authorities, be costs and expenses associated with the transaction.

**7.3 Regulatory Approval for Reorganizations**

(1) Paragraph 5.7(1)(b) of the Instrument requires certain details to be provided in respect of an application for regulatory approval required by paragraph 5.5(1)(b) that is not automatically approved under subsection 5.6(1). The Canadian securities regulatory authorities will be reviewing this type of proposed transaction, among other things, to ensure that adequate disclosure of the differences between the ~~funds~~issuers participating in the proposed transaction is given to securityholders of the ~~mutual~~investment fund that will be merged, reorganized or amalgamated with another ~~mutual fund~~issuer.

(2) If ~~a mutual~~an investment fund is proposed to be merged, amalgamated or reorganized with ~~a mutual~~an investment fund that has a net asset value that is smaller than the net asset value of the terminating ~~mutual~~investment fund, the Canadian securities regulatory authorities will consider the implications of the proposed transaction on the smaller continuing ~~mutual~~investment fund. The Canadian securities regulatory authorities believe that this type of transaction generally would constitute a material change for the smaller continuing ~~mutual~~investment fund, thereby triggering the requirements of paragraph 5.1(1)(g) of the Instrument and Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.

**7.4 [Deleted]**

**7.5 Circumstances in Which Approval of Securityholders Not Required**

(1) Subsection 5.3(2) of the Instrument provides that ~~a mutual~~an investment fund's reorganization with, or transfer of assets to, another ~~mutual fund~~issuer may be carried out on the conditions described in ~~the subsection~~paragraph 5.3(2)(a) or (b) without the prior approval of the securityholders of the ~~mutual~~investment fund.

(2) If the manager refers the change contemplated in subsection 5.3(2) of the Instrument to the ~~mutual~~investment fund's independent review committee, and subsequently seeks the approval of the securityholders of the ~~mutual~~investment fund, the ~~CSA~~Canadian securities regulatory authorities expect the manager to include a description of the independent review committee's determination in the written notice to securityholders referred to in section 5.4 of ~~this~~the Instrument.

(3) The Canadian securities regulatory authorities expect the written notice referred to in subparagraph 5.3(2)(a)(iv) and (v) of the Instrument to include, at a minimum, the expected date of the reorganization, the name of the other investment fund with which the investment fund will be reorganized, how a securityholder of the investment fund may obtain a copy of the other investment fund's fund facts, simplified prospectus or annual information form, as applicable, and a description of the determination of the investment fund's independent review committee with respect to the reorganization.

**7.6 Change of Auditor** – Section 5.3.1 of the Instrument requires that the independent review committee of the ~~mutual~~investment fund give its prior approval to the manager before the auditor of the ~~mutual~~investment fund may be changed.

**7.7 Connection to NI 81-107** – There may be matters under ~~section~~subsection 5.1(1) of the Instrument that may also be a conflict of interest matter as defined in NI 81-107. The ~~CSA~~Canadian securities regulatory authorities expect any matter under ~~section~~subsection 5.1(1) of the Instrument subject to review by the independent review committee to be referred by the manager to the independent review committee before seeking the approval of securityholders of the ~~mutual~~investment fund. The ~~CSA~~Canadian securities regulatory authorities further expect the manager to include a description of the independent review committee's determination in the written notice to securityholders referred to in subsection 5.4(2) of ~~this~~the Instrument.

**7.8 Termination of an Investment Fund –** Subsection 5.8(2) of the Instrument requires a mutual fund that is terminating to give notice of the termination to all securityholders of the mutual fund. Section 5.8.1 of the Instrument requires a non-redeemable investment fund that is terminating to issue and file a press release announcing the termination. Investment funds for which the termination is a material change must also comply with the requirements of Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure.*

**PART 8 CUSTODIANSHIP OF PORTFOLIO ASSETS**

**8.1 Standard of Care -** The standard of care prescribed by section 6.6 of the Instrument is a minimum standard only. Similarly, the provisions of section 6.5 of the Instrument, designed to protect ~~a mutual~~an investment fund from loss in the event of the insolvency of those holding its portfolio assets, are minimum requirements. The Canadian securities regulatory authorities are of the view that the requirements set out in section 6.5 may

require custodians and sub-custodians to take such additional steps as may be necessary or desirable properly to protect the portfolio assets of the ~~mutual~~investment fund in a foreign jurisdiction and to ensure that those portfolio assets are unavailable to satisfy the claims of creditors of the custodian or sub-custodian, having regard to creditor protection and bankruptcy legislation of any foreign jurisdiction in which portfolio assets of ~~a mutual~~an investment fund may be located.

**8.2 Book-Based System**

(1) Subsection 6.5(3) of the Instrument provides that a custodian or sub-custodian of ~~a mutual~~an investment fund may arrange for the deposit of portfolio assets of the ~~mutual~~investment fund with a depository, or clearing agency, that operates a book-based system. Such depositories or clearing agencies include The Canadian Depository For Securities Limited, the Depository Trust Company or any other domestic or foreign depository or clearing agency that is incorporated or organized under the laws of a country or a political subdivision of a country and operates a book-based system in that country or political subdivision or operates a transnational book-based system.

(2) A depository or clearing agency that operates a book-based system used by ~~a mutual~~an investment fund is not considered to be a custodian or sub-custodian of the ~~mutual~~investment fund.

**8.3 Compliance -** Paragraph 6.7(1)(c) of the Instrument requires the custodian of ~~a mutual~~an investment fund to make any changes periodically that may be necessary to ensure that the custodian and sub-custodian agreements comply with Part 6, and that there is no sub-custodian of the ~~mutual~~investment fund that does not satisfy the applicable requirements of sections 6.2 or 6.3. The Canadian securities regulatory authorities note that necessary changes to ensure this compliance could include a change of sub-custodian.

## PART 9 CONTRACTUAL PLANS

**9.1 Contractual Plans -** Industry participants are reminded that the term “contractual plan” used in Part 8 of the Instrument is a defined term in the securities legislation of most jurisdictions, and that contractual plans as so defined are not the same as automatic or periodic investment plans. The distinguishing feature of a contractual plan is that sales charges are not deducted at a constant rate as investments in mutual fund securities are made under the plan; rather, proportionately higher sales charges are deducted from the investments made during the first year, or in some plans the first two years.

## PART 10 SALES AND REDEMPTIONS OF SECURITIES

**10.1 General** ~~–~~ – The purposes of Parts 9, 10 and 11 of the Instrument ~~are intended to ensure~~include ensuring that

(a) investors’ cash is received by ~~a mutual~~an investment fund promptly;

(b) the opportunity for loss of an investors’ cash before investment in the ~~mutual~~investment fund is minimized; and

(c) the ~~mutual~~investment fund or the appropriate investor receives all interest that accrues on cash during the periods between delivery of the cash by an investor until investment in the ~~mutual~~investment fund, in the case of the purchase of ~~mutual~~investment fund securities, or between payment of the cash by the ~~mutual~~investment fund until receipt by the investor, in the case of redemptions.

**10.2 Interpretation**

(1) ~~The Instrument refers to "securityholders" of a mutual fund in several provisions, most notably in Parts 9 and 10 when referring to purchase and redemption orders received by a mutual fund or a participating dealer or principal distributor from "securityholders".~~**[Deleted]**

(2) The Instrument refers to "securityholders" of an investment fund in several provisions. ~~Mutual~~Investment funds must keep a record of the holders of their securities. ~~A mutual~~An investment fund registers a holder of its securities on this record as requested by the person or company placing a purchase order or as subsequently requested by that registered securityholder. The Canadian securities regulatory authorities are of the view that ~~a mutual~~an investment fund is entitled to rely on its register of holders of securities to determine the names of such holders and in its determination as to whom it is to take instructions from.

(3) Accordingly, when the Instrument refers to "securityholder" of ~~a mutual~~an investment fund, it is referring to the securityholder registered as a holder of securities on the records of the ~~mutual~~investment fund. If that registered securityholder is a participating dealer acting for its client, the ~~mutual~~investment fund deals with and takes instructions from that participating dealer. The Instrument does not regulate the relationship between the participating dealer and its client for whom the participating dealer is acting as agent. The Canadian securities regulatory authorities note however, that the participating dealer should, as a matter of prudent business practice, obtain appropriate instructions, in writing, from its client when dealing with the client's beneficial holdings in ~~a mutual~~an investment fund.

**10.3 Receipt of Orders**

(1) A principal distributor or participating dealer of a mutual fund should endeavour, to the extent possible, to receive cash to be invested in the mutual fund at the time the order to which they pertain is placed.

(2) A dealer receiving an order for redemption should, at the time of receipt of the investor's order, obtain from the investor all relevant documentation required by the mutual fund in respect of the redemption including, without limitation, any written request for redemption that may be required by the mutual fund, duly completed and executed, and any certificates representing the mutual fund securities to be redeemed, so that all required documentation is available at the time the redemption order is transmitted to the mutual fund or to its principal distributor for transmittal to the mutual fund.

**10.4 Backward Pricing -** ~~Sections~~Subsections 9.3(1) and 10.3(1) of the Instrument provide that the issue price or the redemption price of a security of a mutual fund to which a purchase order or redemption order pertains shall be the net asset value per security, next determined after the receipt by the mutual fund of the relevant order. For clarification, the

Canadian securities regulatory authorities emphasize that the issue price and redemption price cannot be based upon any net asset value per security calculated before receipt by the mutual fund of the relevant order.

### 10.5 Coverage of Losses

(1) Subsection 9.4(6) of the Instrument provides that certain participating dealers may be required to compensate a mutual fund for a loss suffered as the result of a failed settlement of a purchase of securities of the mutual fund. Similarly, subsection 10.5(3) of the Instrument provides that certain participating dealers may be required to compensate a mutual fund for a loss suffered as the result of a redemption that could not be completed due to the failure to satisfy the requirements of the mutual fund concerning redemptions.

(2) The Canadian securities regulatory authorities have not carried forward into the Instrument the provisions contained in NP39 relating to a participating dealer's ability to recover from their clients or other participating dealers any amounts that they were required to pay to a mutual fund. If participating dealers wish to provide for such rights they should make the appropriate provisions in the contractual arrangements that they enter into with their clients or other participating dealers.

### 10.6 Issue Price of Securities for Non-Redeemable Investment Funds

(1) Paragraph 9.3(2)(a) of the Instrument provides that the issue price of the securities of a non-redeemable investment fund must not, as far as reasonably practicable, be a price that causes dilution of the net asset value of the other outstanding securities of the investment fund at the time the security is issued. The Canadian securities regulatory authorities consider that, to satisfy this requirement, the issue price of the securities should generally not be a price that is less than the net asset value per security of that class, or series of a class, determined on the date of issuance. However, the Canadian securities regulatory authorities recognize that the determination of what is "reasonably practicable" is fact-specific and will vary depending on the type of offering or issuance.

(2) For example, the Canadian securities regulatory authorities generally expect that any issuances of new securities of a non-redeemable investment fund in connection with a merger of the fund, or any issuances of new securities to the manager of the non-redeemable investment fund as payment of management fees, be issued at a price that is not less than the NAV per security on the date of issuance. However, the Canadian securities regulatory authorities have observed when an existing non-redeemable investment fund issues new securities under a prospectus, the issue price typically exceeds the net asset value per security on the day before the date of the prospectus, such that the net proceeds of the offering on a per unit basis is no less than the net asset value per security on the day before the date of the prospectus. The Canadian securities regulatory authorities do not consider this issue price to cause dilution to the net asset value of other outstanding securities of the investment fund.

## PART 11 COMMINGLING OF CASH

### 11.1 Commingling of Cash

(1) Part 11 of the Instrument requires principal distributors and participating dealers to account separately for cash they may receive for the purchase of, or upon the redemption

of, ~~mutual~~investment fund securities. Those principal distributors and participating dealers are prohibited from commingling any cash so received with their other assets or with cash held for the purchase or upon the sale of securities of other types of securities. The Canadian securities regulatory authorities are of the view that this means that dealers may not deposit into the trust accounts established under Part 11 cash obtained from the purchase or sale of other types of securities such as guaranteed investment certificates, government treasury bills, segregated funds or bonds.

(2) Subsections 11.1(2) and 11.2(2) of the Instrument state that principal distributors and participating dealers, respectively, may not use any cash received for the investment in ~~mutual~~investment fund securities to finance their own operations. The Canadian securities regulatory authorities are of the view that any costs associated with returned client cheques that did not have sufficient funds to cover a trade ("NSF cheques") are a cost of doing business and should be borne by the applicable principal distributor or participating dealer and should not be offset by interest income earned on the trust accounts established under Part 11 of the Instrument.

(3) No overdraft positions should arise in these trust accounts.

(4) Subsections 11.1(3) and 11.2(3) of the Instrument prescribe the circumstances under which a principal distributor or participating dealer, respectively, may withdraw funds from the trust accounts established under Part 11 of the Instrument. This would prevent the practice of "lapping". Lapping occurs as a result of the timing differences between trade date and settlement date, when cash of ~~a mutual~~an investment fund client held for a trade which has not yet settled is used to settle a trade for another ~~mutual~~investment fund client who has not provided adequate cash to cover the settlement of that other trade on the settlement date. The Canadian securities regulatory authorities view this practice as a violation of subsections 11.1(3) and 11.2(3) of the Instrument.

(5) Subsections 11.1(4) and 11.2(4) of the Instrument require that interest earned on cash held in the trust accounts established under Part 11 of the Instrument be paid to the applicable ~~mutual~~investment fund or its securityholders "pro rata based on cash flow". The Canadian securities regulatory authorities are of the view that this requirement means, in effect, that the applicable ~~mutual~~investment fund or securityholder should be paid the amount of interest that the ~~mutual~~investment fund or securityholder would have received had the cash held in trust for that ~~mutual~~investment fund or securityholder been the only cash held in that trust account.

(6) Paragraph 11.3(b) of the Instrument requires that trust accounts maintained in accordance with sections 11.1 or 11.2 of the Instrument bear interest "at rates equivalent to comparable accounts of the financial institution". A type of account that ordinarily pays zero interest may be used for trust accounts under sections 11.1 or 11.2 of the Instrument so long as zero interest is the rate of interest paid on that type of account for all depositors other than trust accounts.

## PART 12 [Deleted]

## PART 13 PROHIBITED REPRESENTATIONS AND SALES COMMUNICATIONS

### 13.1 Misleading Sales Communications

(1) Part 15 of the Instrument prohibits misleading sales communications relating to ~~mutual~~investment funds and asset allocation services. Whether a particular description, representation, illustration or other statement in a sales communication is misleading depends upon an evaluation of the context in which it is made. The following list sets out some of the circumstances, in the view of the Canadian securities regulatory authorities, in which a sales communication would be misleading. No attempt has been made to enumerate all such circumstances since each sales communication must be assessed individually.

1. A statement would be misleading if it lacks explanations, qualifications, limitations or other statements necessary or appropriate to make the statement not misleading.

2. A representation about past or future investment performance would be misleading if it is

   (a) a portrayal of past income, gain or growth of assets that conveys an impression of the net investment results achieved by an actual or hypothetical investment that is not justified under the circumstances;

   (b) a representation about security of capital or expenses associated with an investment that is not justified under the circumstances or a representation about possible future gains or income; or

   (c) a representation or presentation of past investment performance that implies that future gains or income may be inferred from or predicted based on past investment performance or portrayals of past performance.

3. A statement about the characteristics or attributes of ~~a mutual~~an investment fund or an asset allocation service would be misleading if

   (a) it concerns possible benefits connected with or resulting from services to be provided or methods of operation and does not give equal prominence to discussion of any risks or associated limitations;

   (b) it makes exaggerated or unsubstantiated claims about management skill or techniques; characteristics of the ~~mutual~~investment fund or asset allocation service; an investment in securities issued by the fund or recommended by the service; services offered by the fund, the service or their respective manager; or effects of government supervision; or

   (c) it makes unwarranted or incompletely explained comparisons to other investment vehicles or indices.

4. A sales communication that quoted a third party source would be misleading if the quote were out of context and proper attribution of the source were not given.

(2) Performance data information may be misleading even if it complies technically with the requirements of the Instrument. For instance, subsections 15.8(1) and (2) of the Instrument contain requirements that the standard performance data for ~~mutual~~investment funds given in sales communications be for prescribed periods falling within prescribed

amounts of time before the date of the appearance or use of the advertisement or first date of publication of any other sales communication. That standard performance data may be misleading if it does not adequately reflect intervening events occurring after the prescribed period. An example of such an intervening event would be, in the case of money market funds, a substantial decline in interest rates after the prescribed period.

(3) An advertisement that presents information in a manner that distorts information contained in the preliminary prospectus or prospectus, or preliminary prospectus, preliminary fund facts document and preliminary annual information form or prospectus, fund facts document and annual information form, as applicable, of ~~a mutual~~an investment fund or that includes a visual image that provides a misleading impression will be considered to be misleading.

(4) Any discussion of the income tax implications of an investment in ~~a mutual~~an investment fund security should be balanced with a discussion of any other material aspects of the offering.

(5) Paragraph 15.2(1)(b) of the Instrument provides that sales communications must not include any statement that conflicts with information that is contained in, among other things and as applicable, a prospectus or fund facts document. The Canadian securities regulatory authorities are of the view that a sales communication that provides performance data in compliance with the requirements of Part 15 of the Instrument for time periods that differ from those shown in a prospectus, fund facts document or management report of fund performance does not violate the requirements of paragraph 15.2(1)(b) of the Instrument.

(6) Subsection 15.3(1) of the Instrument permits ~~a mutual~~an investment fund or asset allocation service to compare its performance to, among other things, other types of investments or benchmarks on certain conditions. Examples of such other types of investments or benchmarks to which the performance of ~~a mutual~~an investment fund or asset allocation service may be compared include consumer price indices; stock, bond or other types of indices; averages; returns payable on guaranteed investment certificates or other certificates of deposit; and returns from an investment in real estate.

(7) Paragraph 15.3(1)(c) of the Instrument requires that, if the performance of ~~a mutual~~an investment fund or asset allocation service is compared to that of another investment or benchmark, the comparison sets out clearly any factors necessary to ensure that the comparison is fair and not misleading. Such factors would include an explanation of any relevant differences between the ~~mutual~~investment fund or asset allocation service and the investment or benchmark to which it is compared. Examples of such differences include any relevant differences in the guarantees of, or insurance on, the principal of or return from the investment or benchmark; fluctuations in principal, income or total return; any differing tax treatment; and, for a comparison to an index or average, any differences between the composition or calculation of the index or average and the investment portfolio of the ~~mutual~~investment fund or asset allocation service.

**13.2 Other Provisions**

(1) Subsection 15.9(1) of the Instrument imposes certain disclosure requirements for sales communications in circumstances in which there was a change in the business, operations or affairs of ~~a mutual~~an investment fund or asset allocation service during or after a

performance measurement period of performance data contained in the sales communication that could have materially affected the performance of the ~~mutual~~investment fund or asset allocation service. Examples of these changes are changes in the management, investment objectives, portfolio adviser, ownership of the manager, fees and charges, or of policies concerning the waiving or absorbing of fees and charges, of the ~~mutual~~investment fund or asset allocation service; or of a change in the characterization of ~~the~~a mutual fund as a money market fund. A reorganization or restructuring of an investment fund that results in a conversion of a non-redeemable investment fund into a mutual fund, or the conversion of a mutual fund into a non-redeemable investment fund, would also be an example of such a change.

(1.1) Subparagraph 15.6(1)(d)(i) of the Instrument prohibits a sales communication pertaining to a mutual fund from including performance data for a period that is before the time when the mutual fund offered its securities under a prospectus. Where the mutual fund has previously existed as a non-redeemable investment fund and has been a reporting issuer in a jurisdiction for a period of at least 12 consecutive months, either as a mutual fund or a non-redeemable investment fund, subsection 15.6(2) requires any sales communication that contains performance data of the mutual fund to include performance data for the period that the fund existed as a non-redeemable investment fund. The Canadian securities regulatory authorities are of the view that performance data pertaining to a mutual fund that has converted from a non-redeemable investment fund should include both the periods before and after the converting transaction, similar to the past performance information presented in the mutual fund's management report of fund performance. Performance data must not be included for any period before the time the non-redeemable investment fund was a reporting issuer.

(2) Paragraph 15.11(1)5 of the Instrument requires that no non-recurring fees and charges that are payable by some or all securityholders and no recurring fees and charges that are payable by some but not all securityholders be assumed in calculating standard performance data. Examples of non-recurring types of fees and charges are front-end sales commissions and contingent deferred sales charges, and examples of recurring types of fees and charges are the annual fees paid by purchasers who purchased on a contingent deferred charge basis.

(3) Paragraphs 15.11(1)2 and 15.11(2)2 of the Instrument require that no fees and charges related to optional services be assumed in calculating standard performance data. Examples of these fees and charges include transfer fees, except in the case of an asset allocation service, and fees and charges for registered retirement savings plans, registered retirement income funds, registered education savings plans, pre-authorized investment plans and systematic withdrawal plans.

(4) The Canadian securities regulatory authorities are of the view that it is inappropriate and misleading for ~~a mutual~~an investment fund that is continuing following a merger to prepare and use *pro forma* performance information or financial statements that purport to show the combined performance of the two funds during a period before their actual merger. The Canadian securities regulatory authorities are of the view that such *pro forma* information is hypothetical, involving the making of many assumptions that could affect the results.

(5) Subsections 15.8(2) and (3) of the Instrument require disclosure of standard performance data of a mutual fund, in some circumstances, from "the inception of the mutual fund". It

is noted that paragraph 15.6(1)(d) generally prohibits disclosure of performance data for a period that is before the time when the mutual fund offered its securities under a prospectus or before an asset allocation service commenced operation. Also, each of Instruction (1) to Item 5 of Part B of Form 81-101F1 *Contents of Simplified Prospectus* and Instruction (1) to Item 2 of Part I of Form 81-101F3 *Contents of Fund Facts Document* requires disclosure of the date on which a mutual fund's securities first became available to the public as the date on which the mutual fund "started". Therefore, consistent with these provisions, the words "inception of the mutual fund" in subsections 15.8(2) and (3) of the Instrument should be read as referring to the beginning of the distribution of the securities of the mutual fund under a prospectus of the mutual fund, and not from any previous time in which the mutual fund may have existed but did not offer its securities under a prospectus. If a mutual fund previously existed as a non-redeemable investment fund, the words "inception of the mutual fund" in subsections 15.8(2) and (3) of the Instrument should be read as referring to the date that the non-redeemable investment fund became a reporting issuer.

(6) Paragraph 15.6(1)(a) of the Instrument contains a prohibition against the inclusion of performance data for a mutual fund that has been distributing securities for less than 12 consecutive months. The creation of a new class or series of security of an existing mutual fund does not constitute the creation of a new mutual fund and therefore does not subject the mutual fund to the restrictions of paragraph 15.6(1)(a) unless the new class or series is referable to a new portfolio of assets.

(7) Section 15.14 of the Instrument contains the rules relating to sales communications for multi-class ~~mutual~~investment funds. Those rules are applicable to ~~a mutual~~an investment fund that has more than one class of securities that are referable to the same portfolio of assets. Section 15.14 does not deal directly with asset allocation services. It is possible that asset allocation services could offer multiple "classes"; the Canadian securities regulatory authorities recommend that any sales communications for those services generally respect the principles of section 15.14 in order to ensure that those sales communications not be misleading.

(8) The Canadian securities regulatory authorities believe that the use of hypothetical or *pro forma* performance data for new classes of securities of a multi-class ~~mutual~~investment fund would generally be misleading.

**13.3 Sales Communications of Non-Redeemable Investment Funds During the Waiting Period and the Distribution Period –** The Canadian securities regulatory authorities remind non-redeemable investment funds of the restrictions contained in securities legislation relating to the distribution of material and advertising and marketing in connection with a prospectus offering during the waiting period and during the distribution period following the issuance of a receipt for the final prospectus. Part 15 of the Instrument does not vary any of the restrictions imposed during these periods.

## PART 14 [Deleted]

## PART 15 SECURITYHOLDER RECORDS

### 15.1 Securityholder Records

(1) Section 18.1 of the Instrument requires the maintenance of securityholder records, including past records, relating to the issue and redemption of securities and distributions of the ~~mutual~~investment fund. Section 18.1 of the Instrument does not require that these records need be held indefinitely. It is up to the particular ~~mutual~~investment fund, having regard to prudent business practice and any applicable statutory limitation periods, to decide how long it wishes to retain old records.

(2) The Canadian securities regulatory authorities are of the view that the requirements in section 18.1 to maintain securityholder records may be satisfied if the investment fund maintains up to date records of registered securityholders. Each investment fund may decide whether it wishes to maintain records of beneficial securityholders.

## PART 16 EXEMPTIONS AND APPROVALS

**16.1 Need for Multiple or Separate Applications -** The Canadian securities regulatory authorities note that a person or company that obtains an exemption from a provision of the Instrument need not apply again for the same exemption at the time of each prospectus or simplified prospectus refiling unless there has been some change in an important fact relating to the granting of the exemption. This also applies to exemptions from NP39 granted before the Instrument; as provided in section 19.2 of the Instrument, it is not necessary to obtain an exemption from the corresponding provision of the Instrument.

**16.2 Exemptions under Prior Policies**

(1) Subsection 19.2(1) of the Instrument provides that a mutual fund that has obtained, from the regulatory or securities regulatory authority, an exemption from a provision of NP 39 before the Instrument came into force is granted an exemption from any substantially similar provision of the Instrument, if any, on the same conditions, if any, contained in the earlier exemption.

(2) The Canadian securities regulatory authorities are of the view that the fact that a number of small amendments have been made to many of the provisions of the Instrument from the corresponding provision of NP39 should not lead to the conclusion that the provisions are not "substantially similar", if the general purpose of the provisions remain the same. For instance, even though some changes have been made in the Instrument, the Canadian securities regulatory authorities consider paragraph 2.2(1)(a) of the Instrument to be substantially similar to paragraph 2.04(1)(b) of NP39, in that the primary purpose of both provisions is to prohibit mutual funds from acquiring securities of an issuer sufficient to permit the mutual fund to control or significantly influence the control of that issuer.

(3) The ~~CSA~~Canadian securities regulatory authorities are of the view that the new provisions of the Instrument relating to mutual funds investing in other mutual funds introduced on December 31, 2003 are not "substantially similar" to those of the Instrument which they replace.

**16.3 Waivers and Orders concerning "Fund of Funds"**

(1) The ~~CSA~~Canadian securities regulatory authorities in a number of jurisdictions have provided waivers and orders from NP39 and securities legislation to permit "fund of funds" to exist and carry on investment activities not otherwise permitted by NP39 or

securities legislation. Some of those waivers and orders contained “sunset” provisions that provided that they expired when legislation or a ~~CSA~~ policy or rule of the Canadian securities regulatory authorities came into force that effectively provided for a new “fund of funds” regime. For greater certainty, the Canadian securities regulatory authorities note that the coming into force of the Instrument will not trigger the “sunset” of those waivers and orders.

(2) For greater certainty, note that the coming into force of ~~National~~the Instrument ~~81-102~~ did not trigger the “sunset” of those waivers and orders. However, the coming into force of section 19.3 of the Instrument will effectively cause those waivers and orders to expire one year after its coming into force.

**ANNEX D**

**SCHEDULE D-1**

**THE MANITOBA SECURITIES COMMISSION**
**MSC Rule No. 2014-3**
(Section 149.1, *The Securities Act*)

**AMENDMENTS TO**
**NATIONAL INSTRUMENT 81-106 *INVESTMENT FUND CONTINUOUS DISCLOSURE***

*1. National Instrument 81-106 Investment Fund Continuous Disclosure is amended by this Instrument.*

*2. Subsection 1.2(3) is repealed.*

*3. Section 1.3 is amended*

*(a) by replacing subsection 1.3(2) with the following:*

**1.3(2)** Terms defined in National Instrument 81-102 *Investment Funds* and used in this Instrument have the respective meanings ascribed to them in that Instrument.*, and*

*(b) by adding the following subsection:*

**1.3(3)** Terms defined in National Instrument 81-104 *Commodity Pools* or National Instrument 81-105 *Mutual Fund Sales Practices* and used in this Instrument have the respective meanings ascribed to them in those Instruments except that references in those definitions to "mutual fund" must be read as references to "investment fund".

*4. Paragraph 3.5(1)2(c) is amended by replacing "*National Instrument 81-102 *Mutual Funds" with "*National Instrument 81-102 *Investment Funds".*

*5. Section 3.8 is amended by adding the following subsections:*

**3.8(4)** An investment fund must include, in the notes to the financial statements, a reconciliation of the gross amount generated from the securities lending transactions of the investment fund to the revenue from securities lending disclosed in the statement of comprehensive income of the investment fund under item 4 of section 3.2.

**3.8(5)** The disclosure referred to in subsection (4) must include each of the following:

(a) the name of each person or company who was entitled to receive payments out of the gross amount generated from the securities lending transactions of the investment fund;

(b) the amount each recipient named under paragraph (a) was entitled to receive;

(c) the aggregate of the amounts disclosed under paragraph (b) as a percentage of the gross amount generated from the securities lending transactions of the investment fund.

*6. Subsection 14.2(2) is amended by replacing "*National Instrument 81-102 Mutual Funds*" with "*National Instrument 81-102 *Investment Funds".*

*7. The Instrument is amended by adding the following section:*

**Securities Lending**

**18.5.2** For financial years beginning before January 1, 2016, an investment fund is not required to comply with subsections 3.8(4) and (5).

*8. Subsection 18.6(1) is amended by replacing "*National Instrument 81-102 *Mutual Funds" with "*National Instrument 81-102 *Investment Funds".*

*9. Item 4.1(1) of Form 81-106F1 is amended by replacing "*National Instrument 81-102 Mutual Funds*" with "*National Instrument 81-102 *Investment Funds".*

*10. Item 4.3(5) of Form 81-106F1 is amended by replacing "*National Instrument 81-102*" with "*National Instrument 81-102 *Investment Funds".*

11. This Instrument comes into force on September 22, 2014.

12. This Instrument may be cited as MSC Rule 2014-3.

**ANNEX E**

**THE MANITOBA SECURITIES COMMISSION**
**MSC Rule No. 2014-4**
(Section 149.1, *The Securities Act*)

**AMENDMENTS TO**
**NATIONAL INSTRUMENT 81-101**
***MUTUAL FUND PROSPECTUS DISCLOSURE***

*1. National Instrument 81-101 Mutual Fund Prospectus Disclosure is amended by this Instrument.*

*2. Section 1.1 is amended*

*(a) in the definition of "***commodity pool***" by replacing "*National Instrument 81-102 Mutual Funds*" with "*National Instrument 81-102 *Investment Funds", and*

*(b) in the definition of "***precious metals fund***" by replacing "*National Instrument 81-102 *Mutual Funds" with "*National Instrument 81-102 *Investment Funds".*

*3. Section 1.2 is amended by replacing "*National Instrument 81-102 *Mutual Funds" with "*National Instrument 81-102 *Investment Funds".*

*4. General Instruction (2) of Form 81-101F1 is amended*

*(a) by replacing "National Instrument 81-102 Mutual Funds" with "National Instrument 81-102 Investment Funds", and*

*(b) by deleting "However, subsection 1.3(3) of National Instrument 81-102 does not apply to this Form".*

*5. Item 5(1) of Part A of Form 81-101F1 is amended by replacing "*registrar and auditor*" with "*registrar, auditor and securities lending agent*".*

*6. Item 5(4.1) of Part A of Form 81-101F1 is amended by replacing "*National Instrument 81-102 Mutual Funds*" with "*National Instrument 81-102 *Investment Funds".*

*7. Item 4(1) of Part B of Form 81-101F1 is amended by replacing "*registrar and auditor*" with "*registrar, auditor and securities lending agent*".*

*8. Item 4(4.1) of Part B of Form 81-101F1 is amended by replacing "*National Instrument 81-102 Mutual Funds*" with "*National Instrument 81-102 *Investment Funds".*

*9. Item 7(10) of Part B of Form 81-101F1 is amended by replacing "*National Instrument 81-102 *Mutual Funds" with "*National Instrument 81-102 *Investment Funds".*

*10. Item 9(1.2) of Part B of Form 81-101F1 is amended by replacing "*National Instrument 81-102 Mutual Funds*" with "*National Instrument 81-102 *Investment Funds".*

*11. General Instruction (2) of Form 81-101F2 is amended by replacing "National Instrument 81-102 Mutual Funds" with "National Instrument 81-102 Investment Funds".*

*12. Form 81-101F2 is amended by adding the following immediately after Item 10.9:*

*Securities Lending Agent*

**10.9.1(1)** State the name of each securities lending agent of the mutual fund and the municipality of each securities lending agent's principal or head office.

**10.9.1(2)** State whether any securities lending agent of the mutual fund is an affiliate or associate of the manager of the mutual fund.

**10.9.1(3)** Briefly describe the essential terms of each agreement with each securities lending agent. Include the amount of collateral required to be delivered in connection with a securities lending transaction as a percentage of the market value of the loaned securities, and briefly describe any indemnities provided in, and the termination provisions of, each such agreement.

*13. General Instructions (2) and (17) of Form 81-101F3 are amended by replacing "National Instrument 81-102 Mutual Funds" with "National Instrument 81-102 Investment Funds".*

*14. Instruction (1) to Item 5 of Part I of Form 81-101F3 is amended by replacing "National Instrument 81-102 Mutual Funds" with "National Instrument 81-102 Investment Funds".*

15. This Instrument comes into force on September 22, 2014.

16. This Instrument may be cited as MSC Rule 2014-4.

**ANNEX F**

**THE MANITOBA SECURITIES COMMISSION**
**MSC Rule No. 2014-5**
(Section 149.1, *The Securities Act*)

**AMENDMENTS TO**
**NATIONAL INSTRUMENT 41-101**
***GENERAL PROSPECTUS REQUIREMENTS***

*1. National Instrument 41-101 General Prospectus Requirements is amended by this Instrument.*

*2. Section 1.1 is amended by replacing the definition of "*NI 81-102*" with the following:*

"**NI 81-102**" means National Instrument 81-102 *Investment Funds*;

*3. Subsection 14.8.1(1) is amended by deleting "*except that each reference in that definition to "a mutual fund" must be read as "an investment fund"*".*

*4. General Instruction (8) of Form 41-101F2 is amended*

*(a) by deleting "subsidiaries and" wherever it occurs; and*

*(b) by replacing "a subsidiary or investee" with "an investee".*

*5. Item 1.3(1) of Form 41-101F2 is amended by deleting "*, including any options or warrants,*".*

*6. Item 3.4(1) of Form 41-101F2 is amended by replacing "*auditor and principal distributor*" with "*auditor, principal distributor and securities lending agent*".*

*7. Item 14.1 of Form 41-101F2 is amended by replacing subsection (2) with the following:*

(2) Describe how the issue price of the securities of the investment fund is determined.

*8. (1) Item 15.1 of Form 41-101F2 is amended by renumbering it as subsection 15.1(1).*

*(2) Item 15.1 of Form 41-101F2, as amended by subsection (1), is amended by adding the following paragraphs immediately after paragraph (a):*

(a.1) the dates on which securities of the investment fund will be redeemed,

(a.2) the dates on which payment of the proceeds of redemption will be made by the investment fund, .

*(3) Item 15.1 of Form 41-101F2, as amended by subsection (1), is amended by adding the following subsection:*

(2) If the proceeds of redemption are computed by reference to the net asset value per security and amounts may be deducted from the net asset value per security, describe each amount that may be deducted and the entity to which each amount is paid. If there is a maximum amount or percentage that may be deducted from the net asset value per security, disclose that amount or percentage.

*9. Item 19.9(1) of Form 41-101F2 is amended*

*(a) by deleting "*or of a subsidiary of the investment fund*",*

*(b) by deleting "*or any of its subsidiaries*",*

*(c) by deleting "*or from a subsidiary of the investment fund*",*

*(d) by deleting "*or a subsidiary of the investment fund*", and*

*(e) by deleting "*or by a subsidiary of the investment fund*".*

*10. Form 41-101F2 is amended by adding the following immediately after Item 19.10:*

**Securities lending agent**

**19.11(1)** Under the sub-heading "Securities Lending Agent", state the name of each securities lending agent of the investment fund and the municipality of each securities lending agent's principal or head office.

**19.11(2)** State whether any securities lending agent of the investment fund is an affiliate or associate of the manager of the investment fund.

**19.11(3)** Briefly describe the essential terms of each agreement with each securities lending agent. Include the amount of collateral required to be delivered in connection with a securities lending transaction as a percentage of the market value of the loaned securities, and briefly describe any indemnities provided in, and the termination provisions of, each such agreement.

*11. Item 21.2 of Form 41-101F2 is amended by deleting "*or its subsidiaries*".*

*12. Item 21.3 of Form 41-101F2 is repealed.*

*13. Item 25.8 of Form 41-101F2 is amended by adding "*and NI 81-102*" after "*the Instrument*".*

*14. Item 27 of Form 41-101F2 is repealed.*

*15. Paragraph (5)(d) of the Instructions under Item 29.2 of Form 41-101F2 is amended by deleting "*or its subsidiaries*".*

*16. Item 39.4 is amended by deleting "*or a subsidiary of the investment fund*".*

*17. Instruction (5) of Item 10 of Part B of Form 41-101F3 is amended by replacing "National Instrument 81-102 Mutual Funds" with "National Instrument 81-102 Investment Funds*".

18. This Instrument comes into force on September 22, 2014.

19. This Instrument may be cited as MSC Rule 2014-5.

**ANNEX G**

**SCHEDULE G-1**

**THE MANITOBA SECURITIES COMMISSION**
**MSC Rule No. 2014-6**
(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. In the following provisions "*National Instrument 81-102 *Mutual Funds" is replaced with "*National Instrument 81-102 *Investment Funds":*

*(a) subsection 3.10(6);*

*(b) paragraph 5.2(1)(a);*

*(c) paragraph 5.2(1)(c).*

*3. Subsection 6.2(2) is amended*

*(a) by replacing* "mutual fund conflict of interest investment restrictions" *with* "investment fund conflict of interest investment restrictions", *and*

*(b) by replacing* "a mutual fund" *with* "an investment fund".

*4. Subsection 6.2(3) is amended*

*(a) by replacing* "mutual fund conflict of interest investment restrictions" *with* "investment fund conflict of interest investment restrictions", *and*

*(b) by replacing "*National Instrument 81-102 *Mutual Funds" with "*National Instrument 81-102 *Investment Funds"* .

*5. Appendix A - Conflict of Interest or Self-Dealing Provisions is amended by replacing "*National Instrument 81-102 *Mutual Funds" with "*National Instrument 81-102 *Investment Funds"*.

6. This Instrument comes into force on September 22, 2014.

7. This Instrument may be cited as MSC Rule 2014-6.

**ANNEX G**

**SCHEDULE G-2**

**CHANGES TO**
**COMMENTARY IN NATIONAL INSTRUMENT 81-107 *INDEPENDENT REVIEW COMMITTEE FOR INVESTMENT FUNDS***

*Note: This Schedule applies to the commentary interspersed with National Instrument 81-107 Independent Review Committee for Investment Funds in most jurisdictions.*

*1. The changes to Commentary in National Instrument 81-107 Independent Review Committee for Investment Funds are set out in this Schedule.*

*2. Commentary 1 to section 1.1 is changed by replacing* "National Instrument 81-102 *Mutual Funds" with* "National Instrument 81-102 *Investment Funds"*.

*3. Commentary 4 to section 5.1 is changed by replacing* "National Instrument 81-102 *Mutual Funds*" *with* "NI 81-102".

4. These changes become effective on September 22, 2014.

**ANNEX H**

**THE MANITOBA SECURITIES COMMISSION**
**MSC Rule No. 2014-7**
(Section 149.1, *The Securities Act*)

**AMENDMENTS TO SPECIFIED INSTRUMENTS**

*1. National Instrument 24-101 Institutional Trade Matching and Settlement, National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, National Instrument 33-109 Registration Information, National Instrument 44-102 Shelf Distributions, National Instrument 45-106 Prospectus and Registration Exemptions, National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues, National Instrument 81-104 Commodity Pools, and National Instrument 81-105 Mutual Fund Sales Practices are amended by this Instrument.*

*2. The National Instruments named in section 1 are amended*

*(a) by replacing "*National Instrument 81-102 Mutual Funds*" with "*National Instrument 81-102 *Investment Funds" wherever it occurs,*

*(b) by replacing "*National Instrument 81-102 - *Mutual Funds" with "*National Instrument 81-102 *Investment Funds" wherever it occurs, and*

*(c) by replacing "*National Instrument 81-102 *Mutual Funds" with "*National Instrument 81-102 *Investment Funds" wherever it occurs.*

3. This Instrument comes into force on September 22, 2014.

4. This Instrument may be cited as MSC Rule 2014-7.

**ANNEX I**

**CHANGE TO**
**COMPANION POLICY 81-104CP TO NATIONAL INSTRUMENT *81-104***
***COMMODITY POOLS***

1. *The change to Companion Policy 81-104CP to National Instrument 81-104 Commodity Pools is set out in this Annex.*

2. *Section 1.1 is changed by replacing* "National Instrument 81-102 Mutual Funds" *with* "National Instrument 81-102 *Investment Funds*".

3. This change becomes effective on September 22, 2014.

**ANNEX J**

**CHANGE TO**
**COMPANION POLICY 31-103CP *REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS***

1. *The change to Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations is set out in this Annex.*

2. *Appendix B— Terms not defined in NI 31-103 or this Companion Policy is changed by replacing* "National Instrument 81-102 *Mutual Funds" with* "National Instrument 81-102 *Investment Funds"*.

3. This change becomes effective on September 22, 2014.

**ANNEX K**

**CHANGE TO**
**NATIONAL POLICY 11-203 *PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE JURISDICTIONS***

1. ***The change to National Policy 11-203 Process For Exemptive Relief Applications In Multiple Jurisdictions is set out in this Annex.***

2. ***Section 5.5 is changed by replacing "***National Instrument 81-102 Mutual Funds***" with "***National Instrument 81-102 *Investment Funds*****".***

3. This change becomes effective on September 22, 2014.