

Appendix A

Summary of Changes

The Instrument

Part 1 Definitions and Application

1.2 “conflict of interest matter”

- For greater certainty, we amended the definition to specifically list – in new Appendix A to the Rule – the provisions in securities legislation that could restrict or prohibit an investment fund, manager or an entity related to the manager from proceeding with a proposed action.
- We added Commentary to articulate our view that the reasonable person test encompassed in paragraph (a) of the definition does not capture inconsequential matters. We also added Commentary setting out our expectations of how a manager could assess conflict of interest matters.
- We added Commentary to clarify our view that, in connection with portfolio managers or advisers, paragraph (a) of the definition only captures those conflicts of interest faced by the portfolio manager that relate to its decisions made on behalf of the investment fund that may affect the manager’s ability to make decisions in the best interests of the fund. We also added examples of the types of portfolio manager conflicts that paragraph (a) may capture.
- We added Commentary to clarify our view that paragraph (a) of the definition is not intended to capture conflicts of interest at the service provider level generally.

1.3 “entity related to the manager”

- We amended a portion of the definition to capture any person or company that can ‘materially affect’ the direction of the management and policies of the manager or the investment fund.
- We moved the reference to “ownership of voting securities” in paragraph (a) of the definition to the Commentary.
- We deleted reference to “agent” in paragraph (b) of the definition because we are satisfied that paragraph (a) captures the entities we intended. For greater clarity, we added Commentary to provide examples of entities captured under paragraph (a) of the definition, including third party portfolio managers.

1.4 “independent”

- We amended paragraph 3 of the Commentary to further clarify our views regarding the types of individuals who may or may not meet the definition.

1.5 “inter-fund self-dealing investment prohibitions”

- For greater certainty, we amended the definition to specifically list – in new Appendix B to the Rule – the provisions in securities legislation that prohibit a portfolio manager or an investment fund from purchasing or selling securities of an issuer from or to the account of a responsible person.

1.6 “manager”

- To avoid confusion, we deleted from the Commentary the statement that there may be circumstances where more than one person or company is designated the manager. We also added examples in the Commentary of the types of managers the definition may capture.
- We added Commentary to articulate that we may examine an investment fund if it seems that it was structured to avoid the operation of this Instrument.

1.7 “standing instruction”

- We added a definition of standing instruction.

Part 2 Functions of the manager

2.1 Manager standard of care

- For greater certainty, we amended the section to better reflect the standard of care for managers in securities legislation.

2.2 Manager to have written policies and procedures

- We amended paragraph (1)(a) to add that in establishing its policies and procedures, the manager must have regard to its duties under securities legislation.
- We added a new subsection (2) that requires the manager, in establishing its policies and procedures under this part, to consider the input of the IRC, if any.
- We amended subsection (3) (previously subsection (2)) to specify that the manager must provide the IRC with a written description of any significant changes to its policies and procedures for IRC input before implementing the revised policies and procedures.

- We amended paragraph 1 of the Commentary to clarify that we expect the manager under this part to identify the conflict of interest matters it expects will arise and that will be referred to the IRC. We further amended paragraph 1 of the Commentary to clarify that this part requires the manager to establish policies and procedures for any other matters required by securities legislation to be referred to the IRC.
- We amended paragraph 2 of the Commentary to clarify that paragraph (1)(a) is intended to reinforce the manager's obligation to make decisions in the best interests of the fund when establishing the fund's policies and procedures.
- We amended paragraph 2 of the Commentary to clarify our expectation that written policies and procedures be designed to prevent, detect and correct violations of securities legislation in the areas addressed by the Rule .
- We added a new paragraph 3 to the Commentary to articulate our expectation that the manager inform the IRC whether its proposed action adheres to its written policies and procedures when referring a matter to the IRC. We further specified in the Commentary our expectation that if an unanticipated conflict of interest matter arises for which the manager does not have a policy and procedure, we expect the manager to bring the matter and its proposed action to the IRC for its review and input at the time the matter is referred to the IRC.

2.3 Manager to maintain records

- We amended paragraph 1 of the Commentary to clarify our expectation that managers will keep their records in accordance with existing best practices.
- We added a new paragraph 2 to the Commentary to clarify our expectation that a manager is required to keep minutes only of any material discussions it has with the IRC or internally on matters subject to IRC review. We further specified in the Commentary that the manager and the IRC may share the record keeping and maintenance of records functions.

2.4 Manager to provide assistance

- We amended subsection (1) to clarify that this provision also applies when a manager refers its policies and procedures to the IRC.

Part 3 Independent review committee

3.1 Independent review committee for an investment fund

- For greater clarity, we amended the Rule to say an investment fund must have an IRC.

- We amended paragraph 2 of the Commentary to expand upon our view that the Rule does not prevent sharing of an IRC, nor a third party from establishing an IRC or IRCs for investment funds.

3.3 Vacancies and reappointments

- We created a new section in the Rule, separating out the provisions regarding IRC vacancies from the provisions regarding the term of office for IRC members.
- We added a new subsection (3) that requires the IRC to consider the manager's recommendations, if any, in filling a vacancy on the IRC.
- We added a new subsection (4) mandating that an IRC member's total years of service on an investment fund's IRC must not be more than 6 years, unless the manager and the IRC agree. We also added to the Commentary to explain our view that a maximum term limit is intended to enhance the independence and effectiveness of the IRC.

3.4 Term of Office

- We amended the term of office provision. We now specify that an IRC member's term must be not less than 1 year and not more than 3 years.

3.6 Written charter

- We amended paragraph 1 of the Commentary to clarify our view that an IRC acting for more than one fund possesses flexibility regarding the adoption of written charters.
- We added to paragraph 3 of the Commentary our expectation that the written charter's policies and procedures would include a policy relating to an IRC member's ownership of securities of the investment fund, manager or in any person or company that provides services to the investment fund or the manager.
- We further added to paragraph 3 of the Commentary our expectation that the written charter's policies and procedures would describe how any subcommittee of the IRC delegated with any of the functions of the IRC is to report to the IRC.
- For greater clarity, we added a new paragraph 4 to the Commentary which states that the Rule does not preclude the IRC and manager from agreeing that the IRC will perform functions in addition to those prescribed, however, the Rule does not regulate any such additional functions.

3.7 Composition

- We added to paragraph 1 of the Commentary our expectation that the manager will seek the input of the IRC prior to changing the size of the IRC.
- We amended paragraph 2 of the Commentary to further clarify our expectations of the role of the IRC Chair.

3.8 Compensation

- We created a new section in the Rule to exclusively address IRC compensation.
- We added subsection (1) to specify that the manager may set the initial compensation and expenses of the first IRC, or any subsequent IRC appointed by the manager under subsection 3.3(5).
- We further added provisions to require the IRC, in setting its members' reasonable compensation and expenses after their initial appointment by the manager, to consider its most recent assessment of its compensation and the manager's recommendations, if any.
- New Commentary was added to correspond with these changes.

3.9 Standard of care

- For consistency, we amended the section to reflect the changes made to section 2.1.

3.10 Ceasing to be a member

- For greater clarity, we rearranged the ordering of subsections (1) and (2).
- We amended subsection (3) by adding paragraphs (d), (e), and (f) which provide that an individual ceases to be a member of the IRC if they are prohibited from acting as a director or officer in Canada, if they are subject to any penalties or sanctions made by a court relating to provincial or territorial securities legislation, or if they are a party to a settlement agreement with a securities regulatory authority in Canada.
- Subsection (4) was amended to correspond to the changes made to subsections (1) and (2).
- We added a new subsection (7) to provide an IRC member who receives notice of a meeting of securityholders called to consider his or her removal, the right to provide the manager with a written statement giving reasons for opposing the removal and to require the manager to send a copy of the statement to securityholders.

- We added a new paragraph 1 to the Commentary to articulate our expectation that the removal of an IRC member by a meeting of securityholders called by the manager will not be routine.

3.11 Authority

- We moved the provisions previously contained in this section that dealt with IRC compensation into new section 3.8.
- We added a new paragraph (d) to subsection (1) and a new subsection (2) to reflect our view that an IRC should have the ability to delegate to subcommittees any of its functions, provided the subcommittees report to the IRC at least annually.
- We amended paragraph 1 of the Commentary to clarify our expectation that an IRC will use independent advisors selectively and only to assist, not replace, IRC decision-making. We also amended this paragraph to clarify our view that we expect the IRC's use of external counsel and other advisers will not be routine.
- We added a new paragraph 2 to the Commentary to articulate our expectations regarding the IRC's use of subcommittees, including that the IRC's delegation to a subcommittee does not absolve the IRC from its responsibility for that function.
- We amended paragraph 3 of the Commentary to clarify our view that the IRC has no obligation to report matters to the securities regulatory authority or regulator other than as prescribed in the Rule and under securities legislation.
- We added a new paragraph 4 to the Commentary to clarify our view that the Rule does not prohibit a manager from communicating with securities regulatory authorities or regulators with respect to any matter.

3.12 Decisions

- We created a new section in the Rule to require that any IRC decisions must have the agreement of a majority of its members. This was previously discussed in the Commentary under section 5.1. This new section also sets out what decisions an IRC may make if it has vacancies and therefore has only one or two members.

3.13 Fees and expenses to be paid by the investment fund

- We amended this section by deleting previous paragraphs (a), (b), and (c) and replacing them with a general requirement for the investment fund to pay from its assets all reasonable costs reasonably incurred in complying with the Rule.
- We amended paragraph 1 of the Commentary to articulate our expectation that a manager will allocate the costs associated with the IRC on an equitable and reasonable basis amongst the investment funds for which the IRC acts.

- We added a new paragraph 2 to the Commentary to clarify our expectation about what costs may appropriately be charged to the investment fund.

3.14 Indemnification and insurance

- We added a new subsection (1) to define “member” for the purposes of this section.
- We deleted the previous subsections (4) and (7) regarding the provision of indemnities with the approval of or upon application to a court.
- We amended paragraph 2 of the Commentary to further clarify our expectations regarding the application of this section.

Part 4 Functions of independent review committee

4.1 Review of matters referred by manager

- We amended subsection (2) by deleting paragraph (b) to clarify that the IRC is only obligated under the Rule to perform functions required by securities legislation (including the Rule). Any additional functions that the IRC undertakes are not regulated under the Rule.
- We amended subsection (3) to provide the IRC with the discretion to choose whether it wishes to deliberate and decide on a matter in the absence of the manager, any representative of the manager and any entity related to the manager.
- We added a new subsection (4) that provides that, despite having discretion to exclude the manager under subsection (3), the IRC must hold at least one meeting annually without the manager, any representative of the manager and any entity related to the manager in attendance.
- For greater clarity, we amended paragraph 2 of the Commentary to further clarify that the Rule does not preclude the IRC and manager from agreeing that the IRC will perform other functions in addition to those prescribed, however, the Rule does not regulate any such additional functions that the IRC may undertake in addition to those prescribed by the Rule.
- We amended paragraph 4 of the Commentary to clarify our view that the IRC’s obligation to hold at least one meeting annually without anyone else present is satisfied if the IRC holds a portion of any meeting annually without the manager, any representative of the manager or any entity related to the manager in attendance.

4.2 Regular assessments

- We added a new paragraph (d) to subsection (1) to require that the IRC review and assess at least annually the adequacy and effectiveness of any subcommittee delegated by the IRC to perform any of its functions.
- We added a new subsection (2) that requires the IRC at least annually to review and assess the independence of each of its members and the compensation of each of its members.
- We amended paragraph 3 of the Commentary to clarify our expectation that the manager may provide IRC members with feedback that the IRC may consider as part of its self-assessment.

4.3 Reporting to the manager

- We replaced the word “suspects” in paragraphs (a) and (b) with “has reason to believe has occurred”.

4.4 Reporting to securityholders

- We amended subsection (1) to set out additional items required to be included in the IRC’s report to securityholders, such as: the basis for the determination that a member is independent if there is a reason to question the member’s independence, the name of any other fund family on whose IRC the member serves, the percentage of securities a member holds in the fund or the manager, any indemnities paid to IRC members, the criteria used by the IRC to determine the appropriate level of its compensation, and a brief summary of any recommendations and approvals (not limited to standing instructions) the manager relied upon during the period.

4.5 Reporting to securities regulatory authorities

- We added a new paragraph 2 to the Commentary to clarify our expectation that an IRC will include in any notification under this section what steps the manager proposes to take, or has taken, to remedy the breach, if known.
- We added a new paragraph 3 to the Commentary to articulate our view that this notification mechanism is not intended to be used to resolve disputes or to raise inconsequential matters.

4.6 Independent review committee to maintain records

- We added a new paragraph (e) to specify that the IRC is required to maintain records of the decisions it makes.
- We added a new paragraph 2 to the Commentary to clarify our expectation that an IRC is required to keep minutes only of any material discussions it has with the manager or internally on matters subject to its review. We further specified in the

Commentary that the IRC and the manager may share the record keeping and maintenance of records functions.

Part 5 Conflict of interest matters

5.1 Manager to refer conflict of interest matters to independent review committee

- We added a new subsection (2) to require that a manager provide a summary of the IRC's decision in the notice of meeting to securityholders, if the matter requires the prior approval of securityholders. This was previously discussed in the Commentary to this section.
- We amended paragraph 1 of the Commentary to clarify our expectations that it is not the role of the IRC to second-guess the investment or business decisions of the manager or an entity related to the manager.
- We added a new paragraph 3 to the Commentary to clarify our expectation that when a conflict of interest matter arises for which the manager does not have an existing policy, the manager will bring the matter and its proposed action to the IRC for its review and input at the time the manager refers the matter to the IRC.
- We deleted the discussion previously contained in paragraph 2 of the Commentary. The Rule now sets out in section 3.12 the IRC composition needed to make decisions.

5.2 Matters requiring independent review committee approval

- We amended paragraph 1 of the Commentary to clarify that if the IRC has not provided a standing instruction, the manager must seek approval in each instance for a matter under subsection (1).
- We also added to the Commentary that an IRC may consider as guidance any conditions imposed in prior exemptive relief orders when contemplating the appropriate terms and conditions of its approval.

5.3 Matters subject to independent review committee recommendation

- We added to subsection (2) a requirement that the manager must notify the IRC in writing prior to proceeding with a proposed action which the IRC considers does not achieve a fair and reasonable result for the investment fund.
- We deleted former subsection (5) that required the manager to pay the costs associated with filing the notification to securityholders.
- We amended paragraph 1 of the Commentary to clarify our expectation that among the factors the manager will look to for guidance in identifying conflict of interest matters under this section will be industry best practices.

5.4 Standing instructions by the independent review committee

- We deleted the prior subsection (1). It was no longer necessary now that we have defined “standing instruction” in section 1.7.
- For greater clarity, we amended previous paragraph (3)(b) (now paragraph (2)(b)) to better reflect each of the steps we expect the IRC to conduct as part of its annual review of any standing instructions.
- We added a new subsection (3) to provide that the manager may continue to rely upon a standing instruction until the IRC notifies it that the standing instruction has been amended or is no longer in effect.

Part 6 Exempted Transactions

6.1 Inter-fund trades

- We moved up the definitions in this section to subsection (1).
- For greater clarity, we added a new subsection (5) to provide an exemption from the dealer registration requirement, to reflect our expectation that inter-fund trades made in accordance with this section are not required to be made through a dealer. This exemption is necessary only in Ontario and Newfoundland and Labrador. Other jurisdictions can rely on the exemption in NI 45-106. New Commentary was added as new paragraph 3 to correspond with this change.
- For ease of reference, we added a new subsection (6) to specify that “dealer registration requirement” has the meaning ascribed to that term under National Instrument 14-101 *Definitions*.
- We also added to the Commentary as new paragraph 4 that this section sets out only the minimum conditions for inter-fund trades to proceed without regulatory exemptive relief, and that an IRC may consider as guidance any conditions imposed in prior exemptive relief orders when contemplating the appropriate terms and conditions of its approval.

6.2 Transactions in securities of related issuers

- For ease of reference, we added a new subsection (3) to specify that “mutual fund conflict of interest investment restrictions” has the meaning ascribed to that term under National Instrument 81-102 *Mutual Funds*. This was previously contained in the Commentary.
- We added a new paragraph 4 to the Commentary to clarify our expectation that if the IRC subsequently withdraws its approval for additional purchases under this section, the manager will consider whether continuing to hold such securities previously

obtained is a conflict of interest matter under paragraph 1.2(a). We also specified in the Commentary our view that the ongoing holding of securities bought in accordance with this section is not subject to paragraph 1.2(b).

Part 7 Exemptions

7.2 Existing exemptions, waivers or approvals

- We amended this section to provide greater clarity that any exemption that deals with the matters that this Rule regulates will expire one year after the Rule comes into force. We also amended the Commentary to state that we consider all exemptions – not just those that deal with matters under subsection 5.2(1) – to expire one year after the Rule comes into force, whether or not they contain a ‘sunset’ provision.

Part 8 Effective date

8.2 Transition

- We amended subsections (1) and (2) to provide a transition period for all investment funds, whether or not established before the date the Rule comes into force.
- We further amended subsections (1) and (2) by deleting the requirements for the IRC to adopt a written charter within three months from the date the IRC is formed, and to have its policies and procedures in place and begin referrals to the IRC within six months from the date the IRC adopts its written charter. Instead, the Rule now provides for a transition period ending on the earlier of the date the manager informs the securities regulatory authorities or regulator it intends to comply fully with the Rule, or one year after the Rule comes into force. The requirement for the manager to appoint the first members of the IRC six months after the Rule comes into force remains.
- We added a new paragraph 3 to the Commentary to clarify our expectation that investment funds that wish to rely upon the Rule before the one year transition period expires, must be in complete compliance with the Rule.
- We added a new paragraph 4 to the Commentary to clarify our expectation that for investment funds established before the expiry of the transition period, the manager will establish policies and procedures on all ongoing conflict matters and refer such matters to the IRC before the end of the transition period.
- We also added a new paragraph 5 to the Commentary to clarify our view that we do not consider a manager’s initial decision-making in the organization of an investment fund to be subject to IRC review, unless the manager’s decisions give rise to conflicts of interest concerning the manager’s obligations to existing investment funds within the manager’s fund family. We also noted in the Commentary that we anticipate the

manager will wish to engage the IRC early in the establishment of the investment fund to ensure the IRC is adequately informed of potential new conflicts of interest.

- We added a new paragraph 7 to the Commentary to clarify our expectation that any new disclosure obligations arising out of the Rule will be incorporated as part of the investment fund’s annual prospectus renewal or continuous disclosure filing following the expiry of the transition period.
- For greater clarity, we added a new paragraph 8 to the Commentary to articulate our view that section 5.1 of NI 81-102 is not intended to capture the costs associated with a fund’s compliance with new regulatory requirements.

Appendix A to the Rule

- For greater clarity, we added a new Appendix A to specifically list the provisions in securities legislation referred to in paragraph 1.2(b) Definition of “conflict of interest matter”.

Appendix B to the Rule

- For greater clarity, we added a new Appendix B to specifically list the inter-fund self-dealing conflict of interest provisions in the securities legislation referred to in section 1.5 Definition of “inter-fund self-dealing investment prohibitions”.

Appendix A to the Commentary

- We moved the decision tree previously contained in Appendix B to the Notice accompanying the 2005 Proposal into Appendix A to the Commentary.

Consequential Amendments

National Instrument 81-101

Form 81-101F1

- We revised the amendment to Item 5 of Part A of Form 81-101F1 so that it now refers to the diagram or table. We also added to the disclosure the requirement to set out the composition of the IRC.
- We revised the amendment to Item 8 of Part A of Form 81-101F1 to provide for alternative disclosure in the Part B if the information required by subsection 3.1 of Item 8 is not the same for each mutual fund.
- We revised the amendment to Item 4 of Part B of Form 81-101F1 so that it now refers to the diagram or table. We also added to the disclosure the requirement to set out the composition of the IRC.

- We added a new subparagraph (f)(iii) to Item 5 of Part B of Form 81-101F1 that requires disclosure of the amount of fees and expenses payable in connection with the IRC if this information is not contained in the table required by Item 8.1 of Part A.

Form 81-101F2

- We added a new paragraph 10.1(h) to Item 10 of Form 81-101F2 that requires a description of the administration of the oversight of the manager of the mutual fund by the IRC.
- We added a new subsection (6) to Item 11 of Form 81-101F2 that requires disclosure of voting or equity securities held by IRC members in the mutual fund, the manager or in any person or company that provides services to the mutual fund or the manager.
- We revised the amendment to Item 12 of Form 81-101F2 by adding a new instruction (2) that provides that if the fund has an IRC, state in the disclosure that NI 81-107 requires the manager to have policies and procedures relating to conflicts of interest.
- For consistency with current requirements, we revised the amendment to Item 15 of Form 81-101F2 to add paragraphs (a) and (b).

National Instrument 81-102

Definition of “mutual fund conflict of interest investment restrictions”

- We revised the amendment to paragraphs (a), (c), (d) and (e) to ensure consistency with existing securities legislation.

Section 4.1 Prohibited Investments

- We revised the amendment to subsection 4.1(4) of NI 81-102 to provide that only an investment made during the 60 day period following the distribution is required to be made on a stock exchange.
- We revised the amendment to paragraph 4.1(4)(d) to clarify that the requirement to file the particulars of each investment made by the fund under this section is with reference to the fund’s most recently completed financial year.
- For greater clarity, we added a new subsection (5) to specifically list – in new Appendix C to NI 81-102 – the provisions in the regulations of the securities legislation that are also exempted if investments are made in accordance with subsection (4).

Section 4.2 Self Dealing

- We moved the amendment previously contained in this section that dealt with an exemption from the self-dealing prohibition in section 4.2 into section 4.3.
- For consistency, we revised the exemption to reflect the corresponding exemption for inter-fund trading in section 6.1 of NI 81-107.

Part 5 Fundamental Changes

- For greater clarity, we revised the amendment to subsection 5.3(2) of NI 81-102 to specify which provisions of section 5.6 we expect the mutual fund to comply with.

Companion Policy 81-102CP

- We revised the amendment to section 7.7 of the Companion Policy to clarify our expectation that the manager will include a description of the independent review committee's determination in the written notice referred to in subsection 5.4(2) of the Rule.

Appendix C

- We created a new Appendix C – Provisions contained in Securities Legislation for the Purpose of Subsection 4.1(5) – Prohibited Investments to specifically list the provisions in the regulations of securities legislation that are also exempted if investments are made in accordance with subsection 4.1(4).

National Instrument 81-106

- We added a new line item requirement to the Statement of Operations in section 3.2 for IRC fees.

National Instrument 13-101

- We revised the amendment to Appendix A of NI 13-101 to conform to SEDAR requirements regarding title names.

National Instrument 81-104

Section 9.2

- For consistency with the disclosure requirements under NI 81-101, we revised the amendment to subsection 9.2(p).