

## **Summary of Changes to the Proposed Amendments**

**This document summarizes the changes we made to the Proposed Amendments in response to the comments received. We do not consider these changes to be material.**

### **Changes to NI 81-102**

#### *Part 1 - Definitions*

1. The defined term “alternative fund” has been changed to “alternative mutual fund”. The definition was also amended to specifically exclude “precious metals funds” from that definition.
2. The definition of “cleared specified derivatives” has been amended to refer only to a specified derivative accepted for clearing by a “regulated clearing agency”, which is a term defined in National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (NI 94-101). This change was made to eliminate redundancies in the definition which became unnecessary once NI 94-101 came into force.
3. The definition of “public quotation” has been amended to include a reference to quotation of a price for a foreign currency forward or foreign currency option in the interbank market. This additional interpretation was initially part of NI 81-104 and has been adopted into NI 81-102 as part of the migration of the various provisions from that Instrument into NI 81-102.

#### *Part 2 - Investments*

4. Subsection 2.5(5) was amended to allow an investment fund to pay brokerage commissions to invest in any exchange traded mutual fund, instead of only those that issue “index participation units”. This aligns with the change to the fund of fund restrictions that will among other things, allow mutual funds to invest in ETFs, or up to 10% of NAV in alternative mutual funds (including those that are ETFs) and non-redeemable investment funds.
5. Subsection 2.6(2) was changed to clarify that the borrowing provisions for alternative mutual funds and non-redeemable investment funds also permit those funds to grant a security interest over their assets, which is similar to the existing borrowing provisions in section 2.6.
6. Subsection 2.6(2) was also changed to expand the scope of permitted lenders to an alternative mutual fund or non-redeemable investment fund to include entities defined in section 6.3 of NI 81-102. This includes foreign banks and trust companies and certain affiliates that are permitted to act as subcustodians for non-Canadian assets of investment

funds. This is in addition to permitted lenders in the Proposed Amendments, which were entities defined in section 6.2 of NI 81-102.

7. The short selling restrictions applicable to alternative mutual funds and non-redeemable investment funds in section 2.6.1 of NI 81-102 in the Proposed Amendments were changed to exempt “government securities” (as that term is defined in NI 81-102) from the short-selling issuer concentration restrictions in that section.

8. The counterparty exposure provisions for specified derivatives transactions in subsection 2.7(4) as set out in the Proposed Amendments were changed to also provide an exemption from the counterparty exposure limit in that section for counterparties that have a “designated rating”. This is in addition to the exemption for cleared specified derivatives that was in the Proposed Amendments.

9. The calculation methodology for the purposes of determining an alternative mutual fund’s or non-redeemable investment fund’s aggregate exposure to borrowing, short selling and specified derivatives in section 2.9.1 of NI 81-102 in the Proposed Amendments has been amended to permit those funds to subtract the aggregate notional value of their specified derivatives positions arising from “hedging” transactions (as that term is defined in NI 81-102), from the aggregate notional value of their specified derivatives positions.

#### *Part 6 – Custodianship of portfolio assets*

10. We have removed the requirements in subsections 6.2(3)(a) and 6.3(3)(a) that an affiliate of a bank or trust company referred to in sections 6.2 and 6.3 must have financial statements that are “publicly available” in order to act as a fund custodian or subcustodian under those sections.

11. Section 6.8.1 was changed to allow an alternative mutual fund or non-redeemable investment fund to deposit up to 25% of its net assets as margin in connection with a short sale of securities, with a borrowing agent that is not the fund’s custodian or subcustodian.

#### *Grandfathering of existing non-redeemable investment funds*

12. We have included provisions that will grandfather certain pre-existing non-redeemable investment funds from the investment restrictions otherwise applicable to non-redeemable investment funds in sections 2.1, 2.4, 2.6, 2.6.1, and 2.9.1 under the Amendments.

#### *Appendix F – Investment Risk Classification Methodology*

13. We have added guidance in the Commentary to Item 1 regarding additional considerations to take into account when using the investment risk classification methodology (the Methodology) in respect of a fund that uses strategies in which the

Methodology may not fully reflect the fund's risk level because of an atypical performance distribution - including using a manager's "upside discretion" in assigning a risk rating. The Methodology was not in force at the time of the Proposed Amendments.

#### **Changes to NI 81-104**

14. We have retained the mutual fund dealer proficiency requirements in Part 4 of NI 81-104 and have amended them to apply to alternative mutual funds. Accordingly, NI 81-104 is no longer being repealed entirely (as was proposed under the Proposed Amendments). All of the other provisions from that Instrument, with the exception of the dealer proficiency requirements in Part 4, are still being repealed or migrated to other Instruments as initially proposed in the Proposed Amendments.

#### **Changes to NI 41-101**

15. The definition of "alternative mutual fund" was added to NI 41-101.

16. We amended Form 41-101F4 *ETF Facts* to include alternative mutual fund-specific disclosure similar to the Fund Facts disclosure requirements under NI 81-101 that were in the Proposed Amendments. This is due to Form 41-101F4 not having been in force at the time the Proposed Amendments were published.