

Annex E

Schedule E-1

Proposed 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 “approved credit rating” by replacing “mutual fund” with “investment fund”,*
 - (b) *in the definition of “borrowing agent” by replacing “a mutual fund” with “an investment fund” wherever it occurs,*
 - (c) *in the definition of “cash cover” by replacing “a mutual fund” with “an investment fund” and by replacing “the mutual fund” with “the investment fund” wherever it occurs,*
 - (d) *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”,*
 - (e) *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,*
 - (f) *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 in accordance with Part 6; ,
 - (g) *by adding the following definition:*

“dealer managed investment fund” means an investment fund the portfolio adviser of which is a dealer manager; ,
 - (h) *in the definition of “debt-like security” by replacing “a mutual fund” with “an investment fund”, by replacing “the mutual fund” with “the investment fund” wherever it occurs, and by replacing “percent” with “%”,*
 - (i) *by repealing the definition of “fixed portfolio ETF”,*

(j) by adding the following definition:

“fixed portfolio fund” means an exchange-traded mutual fund not in continuous distribution, or a non-redeemable investment fund, that

(a) has fundamental investment objectives which include holding and maintaining a fixed portfolio of publicly traded equity securities of one or more issuers the names of which are disclosed in its prospectus, and

(b) trades securities referred to in paragraph (a) only in the circumstances disclosed in its prospectus; ,

(k) in the definition of “floating rate evidence of indebtedness” by replacing paragraph (b) with the following:

(b) the evidence of indebtedness is issued, or 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 an approved credit rating; ,

(l) 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”,

(m) in the definition of “illiquid asset” by replacing “the mutual fund” with “the investment fund” wherever it occurs and by replacing “a mutual fund” with “an investment fund”,

(n) by adding the following definitions:

“investment fund conflict of interest investment restrictions” means any provisions of securities legislation that

(a) prohibit an investment fund from knowingly making or holding an investment in any person or company who is a substantial security holder, as defined in securities legislation, of the investment fund, its management company, manager or distribution company;

(b) prohibit an investment fund from knowingly making or holding an investment in any person or company in which the investment fund, alone or together with one or more related investment funds, is a substantial security holder, as defined in securities legislation;

(c) prohibit an investment fund from knowingly making or holding an investment in an issuer in which any person or company who is a substantial security holder of the investment fund, its management company, manager or distribution company, has a significant interest, as defined in securities legislation;

(d) prohibit an investment fund, a responsible person as defined in securities legislation, a portfolio adviser or a registered person acting under a management contract from knowingly causing any investment portfolio managed by it, or an investment fund, to invest in, or prohibit an investment fund from investing in, any issuer in which a responsible person, as defined in securities legislation, is an officer or director unless the specific fact is disclosed to the investment fund, securityholder or client, and where securities legislation requires it, the written consent of the client to the investment is obtained before the purchase;

(e) prohibit an investment fund, a responsible person as defined in securities legislation, or a portfolio adviser from knowingly causing any investment portfolio managed by it to purchase or sell, or prohibit an investment fund from purchasing or selling, the securities of any issuer from or to the account of a responsible person, as defined in securities legislation, an associate of a responsible person or the portfolio adviser; and

(f) prohibit a portfolio adviser or a registered person acting under a management contract from subscribing to or buying securities on behalf of an investment fund, where his or her own interest might distort his or her judgment, unless the specific fact is disclosed to the client and the written consent of the client to the investment is obtained before the subscription or purchase;

“investment fund conflict of interest reporting requirements” means any provisions of securities legislation that require the filing of a report with the securities regulatory authority in prescribed form that discloses every transaction of purchase or sale of portfolio assets between the investment fund and specified related persons or companies; ,

(o) 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, or

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

(p) 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,

(q) in the definition of “management expense ratio” by replacing “a mutual fund” with “an investment fund”,

(r) by replacing the definition of “manager” with the following:

“manager” means an investment fund manager; ,

(s) by repealing the definitions of “mutual fund conflict of interest investment restrictions” and “mutual fund conflict of interest reporting requirements”,

(t) in the following definitions by replacing “a mutual fund” with “an investment fund”:

(i) “non-resident sub-adviser”;

(ii) “performance data”,

(u) in the definition of “portfolio adviser” by replacing “mutual fund” with “investment fund” wherever it occurs,

(v) in the following definitions by replacing “a mutual fund” with “an investment fund”:

(i) “portfolio asset”;

(ii) “public quotation”,

(w) in the definition of “purchase” by replacing “a mutual fund” with “an investment fund” and by replacing “the mutual fund” with “the investment fund”,

(x) by repealing the definition of “redemption payment date”,

(y) *in the definition of “report to securityholders” by replacing “a mutual fund” with “an investment fund”,*

(z) *in the definition of “restricted security” by replacing “mutual fund” with “investment fund” and by replacing “mutual fund’s” with “investment fund’s”,*

(aa) *in the definition of “sales communication” by replacing “a mutual fund” with “an investment fund” and by replacing “the mutual fund” with “the investment fund” wherever it occurs,*

(bb) *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*;

(cc) *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,*

(dd) *in the definition of “specified dealer” by deleting “or” at the end of paragraph (a),*

(ee) *in the definition of “sub-custodian” by replacing “a mutual fund” with “an investment fund”, by replacing “the mutual fund” with “the investment fund” wherever it occurs, and by replacing “section 6.1” with “Part 6”, and*

(ff) *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 subsection:

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

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

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

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

(c) *by replacing* “percent” *with* “%” *wherever it occurs*,

(d) *by replacing* “a mutual fund” *with* “an investment fund” *wherever it occurs*,

(e) *in paragraph (2)(e) by replacing* “ETF” *with* “fund”,

(f) *in subsection (3) by replacing* “a mutual fund’s” *with* “an investment fund’s”,
and

(g) *by replacing* “the mutual fund” *with* “the investment fund” *wherever it occurs*.

7. Section 2.2 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*,

(d) *by replacing* “percent” *with* “%”, *and*

(e) *by replacing* “a mutual fund” *with* “an investment fund” *wherever it occurs*.

8. (1) Section 2.3 is amended

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

(b) *by replacing* “shall” *with* “must”, *and*

(c) *by replacing* “percent” *with* “%” *wherever it occurs*.

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

(2) A non-redeemable investment fund must not

- (a) purchase real property;
- (b) purchase a mortgage, other than a guaranteed mortgage;
- (c) purchase a gold certificate, other than a permitted gold certificate;
- (d) purchase a physical commodity or a permitted gold certificate or purchase, sell or use a specified derivative the underlying interest of which is a physical commodity or a permitted gold certificate if, immediately after the purchase, sale or use, the non-redeemable investment fund's holdings of physical commodities and permitted gold certificates would exceed an amount equal to 10% of its net asset value;
- (e) purchase, sell or use a specified derivative other than in compliance with sections 2.7 to 2.11; or
- (f) 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.

(3) In determining a non-redeemable investment fund's holdings of physical commodities and permitted gold certificates for the purposes of paragraph (2)(d), the non-redeemable investment fund must

- (a) for each long position and short position in a specified derivative that is held, consider that it holds directly the equivalent quantity of the underlying interest of that specified derivative; and
- (b) aggregate each holding determined in accordance with paragraph (a).

9. Section 2.4 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 "percent" with "%" wherever it occurs,**
- (d) by replacing "a mutual fund" with "an investment fund", and**
- (e) by replacing "the mutual fund" with "the investment fund".**

10. (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) the other investment fund is a mutual fund that is subject to this Instrument and,

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

(ii) if the investment fund is a non-redeemable investment fund, the other investment fund is not a commodity pool as defined in National Instrument 81-104 *Commodity Pools*,

(d) by replacing “other mutual fund” with “other investment fund” wherever it occurs,

(e) by replacing “other mutual funds” with “other investment funds”, and

(f) by replacing “the mutual fund” with “the investment fund” wherever it occurs .

(3) Subsection 2.5(3) is amended

(a) by replacing “a mutual fund” with “an investment fund”, and

(b) 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”.

11. Section 2.6 is amended

(a) by replacing “A mutual fund shall not” with “An investment fund must not”,

(b) in paragraph (a) by replacing subparagraph (i) with the following:

(i) in the case of a mutual fund, the transaction is a temporary measure to accommodate requests for the redemption of securities of the mutual fund while the mutual fund effects an orderly liquidation of portfolio assets, or to permit the mutual fund to settle portfolio transactions and, after giving effect to all transactions undertaken under this subparagraph, the outstanding amount of all borrowings of the mutual fund does not exceed 5% of its net asset value at the time of the borrowing,

(i.1) in the case of a non-redeemable investment fund, the cash is borrowed from a Canadian financial institution and the outstanding amount of all borrowings of the investment fund does not exceed 30% of its net asset value at the time of the borrowing, ,

(c) in subparagraph (a)(ii) by replacing “mutual fund” with “investment fund” and by replacing “made” with “provided”,

(d) in paragraph (a) by adding the following subparagraph immediately after subparagraph (ii):

(ii.1) in the case of a non-redeemable investment fund, the security interest is required to enable the non-redeemable investment fund to effect cash borrowings under subparagraph (i.1), is provided in accordance with industry practice for the loan and relates only to obligations arising under the loan, ,

(e) in subparagraph (a)(iii) by replacing “mutual fund” with “investment fund”, and

(f) in paragraph (d) by replacing “mutual fund” with “investment fund”.

12. Section 2.6.1 is amended

(a) by replacing “A mutual fund” with “An investment fund” wherever it occurs, and

(b) by replacing “the mutual fund” with “the investment fund” wherever it occurs.

13. Section 2.7 is amended

(a) by replacing “A mutual fund” with “An investment fund”,

(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,

(d) by replacing “shall” with “must” wherever it occurs, and

(e) by replacing “percent” with “%”.

14. Section 2.8 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 “percent” with “%”, and

(d) by replacing “the mutual fund” with “the investment fund” wherever it occurs.

15. Section 2.9 is amended by replacing “a mutual fund” with “an investment fund”.

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. (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 adding “,” before “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 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:

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

18. 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 “percent” with “%” wherever it occurs,

(d) by replacing “The mutual fund” with “The investment fund”,

(e) 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. ,

(f) by replacing “A mutual fund” with “An investment fund” wherever it occurs, and

(g) by replacing “shall” with “must” wherever it occurs.

19. 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 “percent” with “%” wherever it occurs,

(d) 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*

(e) by replacing “A mutual fund” with “An investment fund”.

20. Section 2.14 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 “percent” with “%” wherever it occurs.

21. 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, and

(d) in paragraph (4)(c) by replacing “the mutual fund’s” with “the investment fund’s”.

22. 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”.

23. (1) Subsection 2.17(1) is amended

- (a) *by replacing* “A mutual fund shall” *with* “An investment fund must”;
- (b) *by adding* “,” *before* “unless”;
- (c) *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 mutual funds entering into those types of transactions;

(a.1) in the case of an exchange-traded mutual fund that is not in continuous distribution or 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, *and*

- (d) *in paragraph (b) by replacing* “the mutual fund” *with* “the investment fund” *and by replacing* “required for mutual funds entering into those types of transactions” *with* “referred to in paragraph (a) or (a.1), as applicable”.

(2) **Subsection 2.17(3) is amended by adding** “to a mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution,” *after* “does not apply”.

(3) **Section 2.17 is amended by adding the following subsection:**

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

24. Section 2.18 is amended by adding the following subsection:

(3) A non-redeemable investment fund must not describe itself as a “money market fund” . .

25. Section 3.1 is amended by replacing “No person or company shall” with “A person or company must not”.

26. The following provisions are amended by replacing “shall” with “must”:

(a) subsection 3.1(2);

(b) section 3.2.

27. Section 3.3 is amended

(a) by replacing “shall” with “may”,

(b) by repealing subsection (2), and

(c) by adding the following subsection:

(3) None of the costs of incorporation, formation or initial organization of a non-redeemable investment fund, or of the preparation and filing of the initial preliminary prospectus and initial prospectus of the non-redeemable investment fund or documents that must be filed concurrently with the initial preliminary prospectus or initial prospectus, may be borne by the non-redeemable investment fund or its securityholders. .

28. 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 (1) by replacing “five percent” with “5%”.

29. Section 4.2 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 “a mutual fund” with “an investment fund”.

30. 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.*

31. 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).*

32. (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), and*
- (h) by adding the following paragraph:*
 - (h) the investment fund implements a change that restructures the investment fund from*
 - (i) a non-redeemable investment fund into a mutual fund;*

- (ii) a mutual fund into a non-redeemable investment fund; or
- (iii) an investment fund 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:

(2) An investment fund must not bear any of the costs or expenses associated with a change referred to in subparagraphs (1)(h)(i), (ii) or (iii). .

33. 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.***

34. (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, and***
- (d) in paragraph (a) by replacing “the mutual fund” with “the investment fund” wherever it occurs.***

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

(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 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 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) there is no market through which securityholders of the investment fund may sell securities of the investment fund during the existence of the investment fund;

(v) the 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 by 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)..

(3) Section 5.3 is amended by adding the following subsection:

(3) 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 subparagraph 5.1(1)(h)(i) if all of the following conditions apply:

(a) the prospectus of the investment fund contains a description of the change and the event that will cause the change to occur;

(b) the prospectus of the investment fund discloses that, although the approval of securityholders will 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;

(c) the notice referred to in paragraph (b) is sent 60 days before the effective date of the change;

(d) each sales communication of the investment fund discloses that

(i) if the event that causes the change occurs, the investment fund will become a mutual fund,

(ii) if applicable, the investment strategies of the investment fund will change after the investment fund becomes a mutual fund,

(iii) if applicable, the securities of the investment fund will not be listed on the stock exchange on which they trade as a result of the change, and

(iv) additional information regarding the change is available in the prospectus of the investment fund..

35. Section 5.3.1 is amended

(a) by replacing “mutual fund” with “investment fund” wherever it occurs, and

(b) by replacing “may” with “must”.

36. 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) by replacing “paragraphs 5.1(a)” with “paragraphs 5.1(1)(a)”,

(e) by replacing “the mutual fund” with “the investment fund”, and

(f) by replacing “the mutual fund’s” with “the investment fund’s”.

37. 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 after paragraph (a):

(a.1) a change in the control of the manager of an investment fund is made; ,

(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).

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

5.6 Pre-Approved Reorganizations and Transfers – (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,

- (iv) is a reporting issuer in the local jurisdiction and, if the other investment fund is a mutual fund, that 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 current prospectus or the most recently filed fund facts document, and
 - (iii) a statement that securityholders may obtain all of the following documents in respect of the reorganized investment fund at no cost by contacting the reorganized investment fund at an address or telephone

number specified in the statement, or by accessing the documents at a website address specified in the statement:

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

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

(C) if applicable, the most recently filed fund facts document;

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

(E) the most recently filed annual and interim management reports of fund performance;

(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 reorganization or transfer of assets;

(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..

(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 repealed.

39. (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 (b)(ii) by replacing “each of the mutual funds” with “the investment fund and the other issuer”, and

(e) 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”.

40. Section 5.8 is amended

(a) in subsection (1) by replacing “a mutual fund” with “an investment fund” and by replacing “the mutual fund” with “the investment fund” wherever it occurs,

(b) in subsection (2) by replacing “shall” with “may”, and

(c) in subsection (3) by replacing “shall” with “must”.

41. The Instrument is amended by adding the following section:

5.8.1 Termination of Non-Redeemable Investment Fund – (1) A non-redeemable investment fund must not terminate unless the investment fund issues and files a news release that discloses the termination.

(2) A non-redeemable investment fund must be terminated no earlier than 15 days and no later than 30 days after the filing of the news release referred to in subsection (1).

(3) Subsections (1) and (2) do not apply to a non-redeemable investment fund that ceases to continue under a transaction referred to in paragraph 5.1(1)(f).

42. Section 5.9 is amended by replacing “mutual fund” with “investment fund” wherever it occurs.

43. 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) where the appointment is by the custodian, the investment fund gives written consent to each appointment,

(a.1) where the appointment is by a sub-custodian, the investment fund and the custodian of the investment fund give written consent to each 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”.

44. Section 6.2 is amended by replacing it with the following:

6.2 Entities Qualified to Act as Custodian or Sub-Custodian for Assets Held in Canada – 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
 - (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; or
 - (b) the bank or trust company has assumed responsibility for all of the custodial obligations of the company for that investment fund. .

45. Section 6.3 is amended by replacing it with the following:

6.3 Entities Qualified to Act as Sub-Custodian for Assets Held outside Canada – 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 whose laws 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

(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; or

(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. .

46. Section 6.4 is amended

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

(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) a list of all sub-custodians,

(d) the method of holding portfolio assets,

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

(f) review and compliance reports.,

(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”,

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

(2.1) The provisions of an agreement referred to under subsections (1) or (2) must comply with the requirements of this Part., **and**

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

(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. .

47. Section 6.5 is amended by replacing it with the following:

6.5 Holding of Portfolio Assets and Payment of Fees – (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.

(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.

(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.

(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 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.

(5) An investment fund must not pay a fee to the custodian or a sub-custodian 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. .

48. 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,
and**

(e) in subsections (3) and (4) by replacing “a custodian or sub-custodian” with “the custodian or a sub-custodian”.

49. 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

(f) by replacing paragraph (2)(c) with the following:

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

50. 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 (4) with the following:

(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. .

51. 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.

52. 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”.

53. Section 7.1 is amended

(a) by replacing “A mutual fund shall” with “An investment fund must”,

(b) by replacing “no securities of a mutual fund shall” with “securities of an investment fund must not”, and

(c) by replacing “the mutual fund” with “the investment fund”, wherever it occurs.

54. Section 7.2 is amended

(a) by replacing “a mutual fund” with “an investment fund”, and

(b) by replacing “separate mutual fund” with “separate investment fund”.

55. Section 8.1 is amended by replacing “shall” with “may”.

56. Section 9.0.1 is replaced with the following:

9.0.1 **Application** – This Part, other than subsections 9.3(2) and (3), does not apply to an exchange-traded mutual fund that is not in continuous distribution. .

57. Section 9.1 is amended by replacing “shall” with “must” wherever it occurs.

58. (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 subsections:

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

(3) Despite subsection (2), if the securities of an exchange-traded mutual fund that is not in continuous distribution or a non-redeemable investment fund are distributed under a prospectus, the issue price of each security 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; and

(b) 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 that is one business day before the date of the prospectus. .

59. Section 9.4 is amended by replacing “shall” with “must” wherever it occurs.

60. The Instrument is amended by adding the following Part:

Part 9.1 – WARRANTS AND SPECIFIED DERIVATIVES

9.1.1 Issuance of Warrants or Specified Derivatives – An investment fund must not issue conventional warrants or rights, or a specified derivative the underlying interest of which is a security of the investment fund. .

61. (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 a non-redeemable investment fund, by the time of delivery of a redemption order; .

(3) Subsection 10.1(3) is amended by replacing it with the following:

(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 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..

62. Section 10.2 is amended by replacing “shall” with “must” wherever it occurs.

63. 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. .

64. Section 10.4 is amended

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

(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.

(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 (3) by replacing “A mutual fund” with “An investment fund”, and

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

65. Section 10.5 is amended by replacing “shall” with “must” wherever it occurs.

66. Section 10.6 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) in subsection (2) by adding “, (1.1) or (1.2)” after “subsection 10.4(1)”, and

(d) in subsection (3) by replacing “shall” with “must”.

67. (1) Subsection 11.1(1) is amended by replacing it with the following:

11.1 Principal Distributors and Service Providers – (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.

68. Section 11.2 is amended by replacing “shall” with “must” wherever it occurs.

69. 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.

70. Section 11.4 is amended by replacing “shall” with “must”.

71. Section 11.5 is amended

(a) by replacing “The mutual fund” with “The investment fund”,

(b) by replacing “shall” with “must”, and

(c) by replacing “the mutual fund” with “the investment fund” wherever it occurs.

72. Section 12.1 is amended by replacing “shall” with “must” wherever it occurs.

73. Section 14.0.1 is replaced with the following:

14.0.1 **Application** – This Part does not apply to

- (a) an exchange-traded mutual fund, or
- (b) a non-redeemable investment fund if its securities are listed or quoted on an exchange. .

74. Section 14.1 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”.

75. 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”.

76. 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* “fund facts document” *and by replacing* “a mutual fund” *with* “an investment fund”, *and*
- (c) *in subsection (2) by replacing* “shall” *with* “must”.

77. Section 15.3 is amended

- (a) *by replacing* “shall” *with* “must” *wherever it occurs,*
- (b) *in subsection (1) by replacing* “a mutual fund” *with* “an investment fund”,
- (c) *in subsection (2) by replacing* “15.6(a)” *with* “15.6(1)(a)”,
- (d) *by adding the following subsection immediately after subsection (2):*

- (2.1) A sales communication for a non-redeemable investment fund that is prohibited 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”.*

78. (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 (3):

(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 (6):

(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”.

79. Section 15.5 is amended

(a) in subsection (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.

80. (1) Section 15.6 is amended

(a) by renumbering it as subsection 15.6(1),

(b) by replacing “No sales communication pertaining to a mutual fund” with “A sales communication pertaining to an investment fund”,

(c) by replacing “shall” with “must not”,

(d) by replacing “the mutual fund or asset allocation service unless” with “the investment fund or asset allocation service unless all of the following paragraphs apply:”,

(e) in paragraph (a) by replacing “either” with “one of the following subparagraphs applies:”,

(f) by replacing subparagraph (a)(i) with the following:

(i) in the case of a mutual fund,

(A) the mutual fund has distributed securities under a prospectus in a jurisdiction for 12 consecutive months; or

(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; ,

(i.1) 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;

(i.2) 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; ,

(g) by replacing subparagraph (a)(ii) with the following:

(ii) if the sales communication pertains to an investment fund or asset allocation service that does not satisfy subparagraph (a)(i), (i.1), or (i.2), the sales communication is sent only to

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

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

(h) in paragraph (b) by replacing “also contains” with “includes” and by replacing “mutual fund” with “investment fund”,

(i) by deleting “and” at the end of paragraph (c), and

(j) by replacing paragraph (d) with the following:

(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, or

(iii) before the asset allocation service commenced operation. .

(2) Section 15.6, as amended by subsection (1), is amended by adding the following subsection:

(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. .

81. Section 15.7 is amended by replacing “shall” with “must”.

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

15.7.1 Advertisements for Non-Redeemable Investment Funds – 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 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. .

83. (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 the 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 the 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”.

84. 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”.

85. 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
 - (i) the current yield, or
 - (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.*

86. 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. .

87. Section 15.12 is amended by replacing “shall” with “must”.

88. 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*.

89. 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.

90. 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.

91. 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

(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, or

(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.

92. Section 19.2 is amended by replacing “shall” with “must”.

93. Section 20.2 is repealed.

94. Section 20.3 is repealed.

95. Section 20.5 is repealed.

96. 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”.

97. (1) Subject to subsections (2) to (4), this Instrument comes into force on ●.

(2) For a non-redeemable investment fund that has filed a prospectus on or before ●, sections 7 to 10, 53 and 54 of this Instrument come into force on the day that is 18 months after the day referred to in subsection (1).

(3) Despite any requirements to the contrary in this Instrument, sales communications, other than advertisements, that were printed before ● may be used until the day that is six months after the day referred to in subsection (1).

(4) Subsection 61(3) of this Instrument comes into force at the beginning of the first calendar year beginning after the day referred to in subsection (1).