

Annex C

Amendments to National Instrument 81-102 Mutual Funds

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

2. Section 1.1 is amended by:

(a) adding the following definition:

“borrowing agent” means any of the following:

- (a) a custodian or sub-custodian that holds assets in connection with a short sale of securities by a mutual fund;
- (b) a qualified dealer from whom a mutual fund borrows securities in order to sell them short;

(b) replacing the definition of “cash cover” with the following:

“cash cover” means any of the following assets of a mutual fund that are held by the mutual fund, have not been allocated for specific purposes and are available to satisfy all or part of the obligations arising from a position in specified derivatives held by the mutual fund or from a short sale of securities made by the mutual fund:

- (a) cash;
- (b) cash equivalents;
- (c) synthetic cash;
- (d) receivables of the mutual fund arising from the disposition of portfolio assets, net of payables arising from the acquisition of portfolio assets;
- (e) securities purchased by the mutual fund in a reverse repurchase transaction under section 2.14, to the extent of the cash paid for those securities by the mutual fund;
- (f) each evidence of indebtedness that has a remaining term to maturity of 365 days or less and an approved credit rating;

- (g) each floating rate evidence of indebtedness if
 - (i) the floating interest rate of the indebtedness is reset no later than every 185 days, and
 - (ii) the principal amount of the indebtedness will continue to have a market value of approximately par at the time of each change in the rate to be paid to the holders of the evidence of indebtedness;
- (h) securities issued by a money market fund;;

(c) ***adding the following definitions:***

“clone fund” means a mutual fund that has adopted a fundamental investment objective to track the performance of another mutual fund;

“fixed portfolio ETF” means an exchange-traded mutual fund not in continuous distribution 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 the securities referred to in paragraph (a) only in the circumstances disclosed in its prospectus;

“floating rate evidence of indebtedness” means an evidence of indebtedness that has a floating rate of interest determined over the term of the obligation by reference to a commonly used benchmark interest rate and that satisfies any of the following:

- (a) if the evidence of indebtedness was issued by a person or company other than a government or a permitted supranational agency, it has an approved credit rating;
- (b) if the evidence of indebtedness was issued by a government or a permitted supranational agency, it has its principal and interest fully and unconditionally guaranteed 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;

“IIROC” means the Investment Industry Regulatory Organization of Canada;

“manager-prescribed number of units” means, in relation to an exchange-traded mutual fund that is in continuous distribution, the number of units determined by the manager from time to time for the purposes of subscription orders, exchanges, redemptions or for other purposes;

“MFDA” means the Mutual Fund Dealers Association of Canada;;

(d) *replacing the definition of “money market fund” with the following:*

“money market fund” means a mutual fund that invests its assets in accordance with section 2.18;;

(e) *adding the following definitions:*

“mutual fund rating entity” means an entity

(a) that rates or ranks the performance of mutual funds or asset allocation services through an objective methodology that is

(i) based on quantitative performance measurements,

(ii) applied consistently to all mutual funds or asset allocation services rated or ranked by it, and

(iii) disclosed on the entity’s website,

(b) that is not a member of the organization of any mutual fund, and

(c) whose services to assign a rating or ranking to any mutual fund or asset allocation service are not procured by the promoter, manager, portfolio adviser, principal distributor or participating dealer of any mutual fund or asset allocation service, or any of their affiliates;

“overall rating or ranking” means a rating or ranking of a mutual fund or asset allocation service that is calculated from standard performance data for one or more performance measurement periods, which includes the longest period for which the mutual fund or asset allocation service is

required under securities legislation to calculate standard performance data, other than the period since the inception of the mutual fund;;

- (f) ***replacing the definition of “permitted supranational agency” with the following:***

“permitted supranational agency” means the African Development Bank, the Asian Development Bank, the Caribbean Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the Inter-American Development Bank, the International Bank for Reconstruction and Development and the International Finance Corporation;;

- (g) ***adding the following definition:***

“redemption payment date” means, in relation to an exchange-traded mutual fund that is not in continuous distribution, a date specified in the prospectus or annual information form of the exchange-traded mutual fund on which redemption proceeds are paid;;

- (h) ***repealing the definition of “RSP clone fund”; and***

- (i) ***deleting “simplified” wherever it occurs in paragraph (b) of the definition of “sales communication”.***

3. ***Section 1.2 is amended by deleting “simplified” wherever it occurs.***

4. ***Subsection 1.3(3) is repealed.***

5. ***Section 2.1 is amended:***

- (a) ***in subsection (1) by replacing “the net assets of the mutual fund, taken at market value at the time of the transaction,” with “its net asset value”;***

- (b) ***by replacing subsection (2) with the following:***

(2) Subsection (1) does not apply to the purchase of any of the following:

- (a) a government security;
- (b) a security issued by a clearing corporation;
- (c) a security issued by a mutual fund if the purchase is made in accordance with the requirements of section 2.5;

- (d) an index participation unit that is a security of a mutual fund;
 - (e) an equity security if the purchase is made by a fixed portfolio ETF in accordance with its investment objectives.; **and**
 - (c) **in subsection (5) by replacing** “its simplified prospectus” **with** “its prospectus”.
6. **Subsection 2.2(1.1) is replaced with the following:**
- (1.1) Subsection (1) does not apply to the purchase of any of the following:
- (a) a security issued by a mutual fund if the purchase is made in accordance with section 2.5;
 - (b) an index participation unit that is a security of a mutual fund..
7. **Paragraphs 2.3(c) and (e) are amended by replacing** “the net assets of the mutual fund, taken at market value at the time of the purchase, would consist” **with** “its net asset value would be made up”.
8. **Section 2.4 is amended:**
- (a) **in subsection (1) by replacing** “the net assets of the mutual fund, taken at market value at the time of the purchase, would consist” **with** “its net asset value would be made up”;
 - (b) **in subsection (2) by replacing** “net assets, taken at market value,” **with** “net asset value”; **and**
 - (c) **in subsection (3) by replacing** “net assets of a mutual fund, taken at market value, are” **with** “net asset value of a mutual fund is made up of”, **and replacing** “its net assets” **with** “its net asset value”.
9. **Section 2.5 is amended:**
- (a) **by replacing paragraph (2)(a) with the following:**
 - (a) the other mutual fund is subject to this Instrument and offers or has offered securities under a simplified prospectus in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.;
 - (b) **in paragraph (2)(b) by replacing** “the market value of its net assets” **with** “its net asset value”;

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

(c) the mutual fund and the other mutual fund are reporting issuers in the local jurisdiction,;

(d) *in paragraph (4)(a) by deleting “RSP”; and*

(e) *in subsection (5) by replacing “Paragraph (2)(f) does” with “Paragraphs (2)(e) and (f) do”.*

10. Section 2.6 is amended:

(a) *in subparagraph (a)(i) by replacing “the net assets of the mutual fund taken at market value” with “its net asset value”;*

(b) *by replacing subparagraph (a)(ii) with the following:*

(ii) the security interest is required to enable the mutual fund to effect a specified derivative transaction or short sale of securities under this Instrument, is made in accordance with industry practice for that type of transaction and relates only to obligations arising under the particular specified derivatives transaction or short sale,;

(c) *by replacing “;” at the end of subparagraph (a)(iii) with “, or”;*

(d) *by adding the following subparagraph:*

(iv) in the case of an exchange-traded mutual fund that is not in continuous distribution, the transaction is to finance the acquisition of its portfolio securities and the outstanding amount of all borrowings is repaid on the closing of its initial public offering;; *and*

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

(c) sell securities short other than in compliance with section 2.6.1, unless permitted by section 2.7 or 2.8,;

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

2.6.1 Short Sales – (1) A mutual fund may sell a security short if

(a) the security sold short is sold for cash;

(b) the security sold short is not any of the following:

(i) a security that the mutual fund is otherwise not permitted by securities legislation to purchase at the time of the short sale transaction;

(ii) an illiquid asset;

(iii) a security of an investment fund other than an index participation unit; and

(c) at the time the mutual fund sells the security short

(i) the mutual fund has borrowed or arranged to borrow from a borrowing agent the security that is to be sold under the short sale;

(ii) the aggregate market value of all securities of the issuer of the securities sold short by the mutual fund does not exceed 5% of the net asset value of the mutual fund; and

(iii) the aggregate market value of all securities sold short by the mutual fund does not exceed 20% of the net asset value of the mutual fund.

(2) A mutual fund that sells securities short must hold cash cover in an amount that, together with portfolio assets deposited with borrowing agents as security in connection with short sales of securities by the mutual fund, is at least 150% of the aggregate market value of all securities sold short by the mutual fund on a daily mark-to-market basis.

(3) A mutual fund must not use the cash from a short sale to enter into a long position in a security, other than a security that qualifies as cash cover..

12. Section 2.7 is amended:

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

2.7 Transactions in Specified Derivatives for Hedging and Non-hedging Purposes – (1)

A mutual fund must not purchase an option or a debt-like security or enter into a swap or a forward contract unless, at the time of the transaction, any of the following apply:

(a) in the case of an option, the option is a clearing corporation option;

(b) the option, debt-like security, swap or contract, has an approved credit rating;

(c) the equivalent debt of the counterparty, or of a person or company that has fully and unconditionally guaranteed the obligations of the counterparty in respect of the option, debt-like security, swap or contract, has an approved credit rating.; **and**

(b) *in subsection (4) by replacing “net assets” with “net asset value”.*

13. *Paragraph 2.8(1)(a) is amended by replacing “the net assets of the mutual fund, taken at market value at the time of the purchase, would consist” with “its net asset value would be made up”.*

14. *Section 2.11 is replaced with the following:*

2.11 Commencement of Use of Specified Derivatives and Short Selling by a Mutual Fund – (1) A mutual fund that has not used specified derivatives must not begin using specified derivatives, and a mutual fund that has not sold a security short in accordance with section 2.6.1 must not sell a security short unless

(a) its prospectus contains the disclosure required for a mutual fund intending to engage in the activity; and

(b) the mutual fund has provided to its securityholders, not less than 60 days before it begins the intended activity, written notice that discloses its intent to engage in the activity and the disclosure required for mutual funds intending to engage in the activity.

(2) A mutual fund is not required to provide the notice referred to in paragraph (1)(b) if each prospectus of the mutual fund since its inception has contained the disclosure referred to in paragraph (1)(a)..

15. *Section 2.17 is amended by deleting “simplified” wherever it occurs.*

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

2.18 Money Market Fund – (1) A mutual fund must not describe itself as a “money market fund” in its prospectus, a continuous disclosure document or a sales communication unless

(a) it has all of its assets invested in one or more of the following:

(i) cash,

(ii) cash equivalents,

(iii) an evidence of indebtedness that has a remaining term to maturity of 365 days or less and an approved credit rating,

(iv) a floating rate evidence of indebtedness if

(A) the floating interest rate of the indebtedness is reset no later than every 185 days, and

(B) the principal amount of the indebtedness will continue to have a market value of approximately par at the time of each change in the rate to be paid to the holders of the evidence of indebtedness, or

(v) securities issued by one or more money market funds,

(b) it has a portfolio of assets, excluding a security described in subparagraph (a)(v), with a dollar-weighted average term to maturity not exceeding

(i) 180 days, and

(ii) 90 days when calculated on the basis that the term of a floating rate obligation is the period remaining to the date of the next rate setting,

(c) not less than 95% of its assets invested in accordance with paragraph (a) are denominated in a currency in which the net asset value per security of the mutual fund is calculated, and

(d) it has not less than

(i) 5% of its assets invested in cash or readily convertible into cash within one day, and

(ii) 15% of its assets invested in cash or readily convertible into cash within one week.

(2) Despite any other provision of this Instrument, a mutual fund that describes itself as a “money market fund” must not use a specified derivative or sell securities short..

17. Subsection 3.1(1) and sections 3.2 and 3.3 are amended by deleting “simplified” wherever it occurs.

18. Section 3.3 is amended by renumbering it as subsection 3.3(1) and by adding the following subsection:

(2) Subsection (1) does not apply to an exchange-traded mutual fund unless the fund is in continuous distribution..

19. Section 4.1 is amended by adding the following subsection:

(4.1) In paragraph (4)(b), “approved rating” has the meaning ascribed to it in National Instrument 44-101 – *Short Form Prospectus Distributions*..

20. Section 5.3 is amended:

- (a) **in subsection (1) by replacing “paragraph 5.1(a)” in the portion before paragraph (a) with “paragraphs 5.1(a) and (a.1)”;**
- (b) **in subparagraph (1)(a)(i) by replacing “paragraph 5.1(a) that is changed” with “paragraphs 5.1(a) and (a.1)”;** **and**
- (c) **in subparagraphs (1)(a)(ii) and (b)(ii) and paragraph (2)(d) by deleting “simplified”.**

21. Paragraph 5.3.1(b) is amended by deleting “simplified”.

22. Paragraph 5.4(2)(a) is amended by replacing “paragraph 5.1(a)” with “paragraphs 5.1(a) or (a.1)”.

23. Subsection 5.6(1) is amended:

- (a) **in subparagraph (a)(iv) by deleting “simplified”;**
- (b) **by replacing subparagraph (e)(i) with the following:**
 - (i) by the securityholders of the mutual fund in accordance with paragraph 5.1(f), unless subsection 5.3(2) applies, and; **and**
- (c) **in subparagraphs (f)(ii) and (iii) by deleting “simplified”.**

24. Paragraph 5.7(1)(d) is amended by deleting “simplified”.

25. In the following provisions, “sections 6.8 and 6.9” is replaced with “sections 6.8, 6.8.1 and 6.9”:

- (a) **subsections 6.1(1) and (2);**
- (b) **subsection 6.5(1).**

26. ***Subsection 6.8(1) and paragraph 6.8(2)(c) are amended by replacing “net assets of the mutual fund, taken at market value” with “net asset value of the mutual fund”.***

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

6.8.1 Custodial Provisions relating to Short Sales – (1) Except where the borrowing agent is the mutual fund’s custodian or sub-custodian, if a mutual fund deposits portfolio assets with a borrowing agent as security in connection with a short sale of securities, the market value of portfolio assets deposited with the borrowing agent must not, when aggregated with the market value of portfolio assets already held by the borrowing agent as security for outstanding short sales of securities by the mutual fund, exceed 10% of the net asset value of the mutual fund at the time of deposit.

(2) A mutual fund must not deposit portfolio assets as security in connection with a short sale of securities with a dealer in Canada unless the dealer is a registered dealer and is a member of IIROC.

(3) A mutual fund must not deposit portfolio assets as security in connection with a short sale of securities with a dealer outside of Canada unless that dealer

(a) is a member of a stock exchange and is subject to a regulatory audit;
and

(b) has a net worth, determined from its most recent audited financial statements that have been made public, in excess of the equivalent of \$50 million..

28. ***The following provisions are amended by deleting “simplified”:***

(a) ***paragraph 7.1(c);***

(b) ***paragraph 8.1(a).***

29. ***Part 9 is amended by adding the following section:***

9.0.1 Application – This Part does not apply to an exchange-traded mutual fund unless the fund is in continuous distribution..

30. ***Section 9.1 is amended by adding the following subsection:***

(0.1) This section does not apply to an exchange-traded mutual fund..

31. ***Paragraph 9.2(c) is amended by deleting “simplified”.***

32. Section 9.4 is amended:

(a) in subsection (1) by

(i) adding “or securities” after the first occurrence of “cash”, and

(ii) replacing “arrives” with “or securities arrive”; and

(b) by replacing subsection (2) with the following:

(2) Payment of the issue price of securities of a mutual fund must be made to the mutual fund on or before the third business day after the pricing date for the securities by using any or a combination of the following methods of payment:

(a) by paying cash in a currency in which the net asset value per security of the mutual fund is calculated;

(b) by making good delivery of securities if

(i) the mutual fund would at the time of payment be permitted to purchase those securities,

(ii) the securities are acceptable to the portfolio adviser of the mutual fund and consistent with the mutual fund’s investment objectives, and

(iii) the value of the securities is at least equal to the issue price of the securities of the mutual fund for which they are payment, valued as if the securities were portfolio assets of the mutual fund..

33. Section 10.2 is amended by adding the following subsection:

(0.1) This section does not apply to an exchange-traded mutual fund.

34. Section 10.3 is amended by renumbering it as subsection 10.3(1), by replacing “net asset value of a security” with “net asset value per security”, and by adding the following subsections:

(2) Despite subsection (1), the redemption price of a security of an exchange-traded mutual fund that is not in continuous distribution may be a price that is less than the net asset value of the security and that is determined on a date specified in the exchange-traded mutual fund’s prospectus or annual information form.

(3) Despite subsection (1), the redemption price of a security of an exchange-traded mutual fund that is in continuous distribution may, if a securityholder redeems fewer than the manager-prescribed number of units, be a price that is calculated by reference to the closing price of the security on the stock exchange on which the security is listed and posted for trading, next determined after the receipt by the exchange-traded mutual fund of the redemption order..

35. *Section 10.4 is amended:*

(a) *in subsection (1) by:*

(i) *replacing the portion of subsection (1) before paragraph (a) with the following:*

10.4 Payment of Redemption Proceeds – (1) Subject to subsection 10.1(1) and to compliance with any requirements established by the mutual fund under paragraph 10.1(2)(b), a mutual fund must pay the redemption proceeds for securities that are the subject of a redemption order, *and*

(ii) *replacing the portion of paragraph (b) before subparagraph (i) with the following:*

(b) if payment of the redemption proceeds was not made at the time referred to in paragraph (a) because a requirement established under paragraph 10.1(2)(b) or a requirement of subsection 10.1(1) had not been satisfied, within three business days of;

(b) *by adding the following subsection:*

(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 the redemption payment date that next follows the valuation date on which the redemption price was established.;

(c) *by replacing subsection (2) with the following:*

(2) The redemption proceeds for a redeemed security, less any applicable investor fees, must be paid to or to the order of the securityholder of the security.;

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

(3) A mutual fund must pay the redemption proceeds for a redeemed security by using any or a combination of the following methods of payment:

(a) by paying cash in the currency in which the net asset value per security of the redeemed security was calculated;

(b) with the prior written consent of the securityholder for a redemption other than an exchange of a manager-prescribed number of units, by making good delivery to the securityholder of portfolio assets, the value of which is equal to the amount at which those portfolio assets were valued in calculating the net asset value per security used to establish the redemption price.; **and**

(e) **in subsection (5) by replacing** “redemption price of a security is” **with** “redemption proceeds for a redeemed security are”.

36. Section 10.6 is amended:

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

10.6 Suspension of Redemptions – (1) A mutual fund may suspend the right of securityholders to request that the mutual fund redeem its securities for the whole or any part of a period during which either of the following occurs:

(a) normal trading is suspended on a stock exchange, options exchange or futures exchange within or outside Canada on which securities are listed and posted for trading, or on which specified derivatives are traded, if those securities or specified derivatives represent more than 50% by value, or underlying market exposure, of the total assets of the mutual fund without allowance for liabilities and if those securities or specified derivatives are not traded on any other exchange that represents a reasonably practical alternative for the mutual fund;

(b) in the case of a clone fund, the mutual fund whose performance it tracks has suspended redemptions.; **and**

(b) **in subsection (2) by replacing** “redemption price” **with** “redemption proceeds”.

37. Subsection 11.2(2) is amended by adding “in” immediately after “referred to”.

38. Section 11.4 is amended:

- (a) *in subsection (1) by replacing* “members of the Investment Dealers Association of Canada” *with* “a member of IIROC”;
- (b) *by adding the following subsections:*
 - (1.1) Except in Québec, sections 11.1 and 11.2 do not apply to a member of the MFDA.
 - (1.2) In Québec, sections 11.1 and 11.2 do not apply to a mutual fund dealer.; *and*
- (c) *in subsection (2) by*
 - (i) *adding* “or (1.1) or, in Québec, that is a mutual fund dealer,” *after* “subsection (1)”, *and*
 - (ii) *adding* “, or the requirements applicable to the mutual fund dealer under the regulations in Québec,” *after* “association or exchange”.

39. Section 12.1 is amended:

- (a) *in subsection (1) by adding* “, other than an exchange-traded mutual fund that is not in continuous distribution,” *after* “A mutual fund”;
- (b) *by replacing subsection (4) with the following:*
 - (4) Subsections (2) and (3) do not apply to a member of IIROC.; *and*
- (c) *by adding the following subsections:*
 - (4.1) Except in Québec, subsections (2) and (3) do not apply to a member of the MFDA.
 - (4.2) In Québec, subsections (2) and (3) do not apply to a mutual fund dealer..

40. Part 14 is amended by adding the following section:

14.0.1 **Application** - This Part does not apply to an exchange-traded mutual fund..

41. Paragraph 15.2(1)(b) is amended by deleting “simplified” *wherever it occurs.*

42. Section 15.3 is amended:

- (a) *by replacing subsection (4) with the following:*

(4) A sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless

(a) the rating or ranking is prepared by a mutual fund rating entity;

(b) standard performance data is provided for any mutual fund or asset allocation service for which a performance rating or ranking is given;

(c) the rating or ranking is provided for each period for which standard performance data is required to be given, except the period since the inception of the mutual fund;

(d) the rating or ranking is based on a published category of mutual funds that

(i) provides a reasonable basis for evaluating the performance of the mutual fund or asset allocation service, and

(ii) is not established or maintained by a member of the organization of the mutual fund or asset allocation service;

(e) the sales communication contains the following disclosure:

(i) the name of the category within which the mutual fund or asset allocation service is rated or ranked, including the name of the organization that maintains the category,

(ii) the number of mutual funds in the applicable category for each period of standard performance data required under paragraph (c),

(iii) the name of the mutual fund rating entity that provided the rating or ranking,

(iv) the length of the period or the first day of the period on which the rating or ranking is based, and its ending date,

(v) a statement that the rating or ranking is subject to change every month,

(vi) the criteria on which the rating or ranking is based, and

(vii) if the rating or ranking consists of a symbol rather than a number, the meaning of the symbol, and

(f) the rating or ranking is to the same calendar month end that is

(i) not more than 45 days before the date of the appearance or use of the advertisement in which it is included, and

(ii) not more than three months before the date of first publication of any other sales communication in which it is included.; **and**

(b) by adding the following subsection:

(4.1) Despite paragraph (4)(c), a sales communication may refer to an overall rating or ranking of a mutual fund or asset allocation service in addition to each rating or ranking required under paragraph (4)(c) if the sales communication otherwise complies with the requirements of subsection (4)..

43. The following provisions are amended by deleting “simplified” wherever it occurs:

(a) subsection 15.4(9);

(b) paragraphs 15.5(1)(b) and 15.5(1)(c);

(c) subparagraph 15.6(a)(i) and paragraph 15.6(d);

(d) paragraphs 15.8(2)(a) and 15.8(3)(a);

(e) section 15.12;

(f) subsections 19.2(2) and 19.2(3);

(g) paragraph 20.4(b).

44. (1) Subject to subsection (2), this Instrument comes into force on April 30, 2012.

(2) Paragraph 2(d) and section 16 of this Instrument come into force on the day that is six months after the day referred to in subsection (1).