

**APPENDIX D
NATIONAL INSTRUMENT 81-102
MUTUAL FUNDS
AMENDMENT INSTRUMENT**

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

2. Section 1.1 is amended by:

(a) adding the following after the definition of “illiquid asset”:

““independent review committee” means the independent review committee of the investment fund in compliance with in National Instrument 81-107 *Independent Review Committee for Investment Funds*;

(b) repealing the definition of “mutual fund conflict of interest investment restrictions” and substituting the following:

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

(a) prohibit a mutual 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 mutual fund, its management company or distribution company;

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

(c) prohibit a mutual 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 mutual fund, its management company or distribution company, has a significant interest, as defined in securities legislation;

(d) prohibit a portfolio adviser or a registered person acting under a management contract from knowingly causing any investment portfolio managed by it to invest in, or prohibit a mutual 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 client and the written consent of the client to the investment is obtained before the purchase;

(e) prohibit a portfolio adviser knowingly causing any investment portfolio managed by it to purchase or sell, or prohibit a mutual fund to purchase or sell, 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 a mutual 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.”; and

(c) adding the following after the definition of “mutual fund conflict of interest reporting requirements”:

““NI 81-107” means National Instrument 81-107 *Independent Review Committee for Investment Funds.*”.

3. Section 4.1 is amended by adding the following after subsection (3):

“(4) Subsection (1) does not apply to an investment in a class of securities of an issuer if, at the time of each investment

(a) the independent review committee has approved the transaction under subsection 5.2(1) of NI 81-107;

(b) for an investment in a class of equity securities of an issuer

(i) the distribution of the class of equity securities is made by prospectus filed with one or more securities regulatory authorities or regulators in Canada, and

(ii) the investment is made on a stock exchange on which the class of equity securities of the issuer are listed and traded;

(c) for an investment in a class of debt securities of an issuer other than a class of debt securities issued or fully and unconditionally guaranteed by the government of Canada or the government of a jurisdiction

(i) neither the manager of the dealer managed mutual fund nor its associates or affiliates is

(A) the issuer of the securities, or

(B) a promoter of the issuer of the securities, and

(ii) the security has been given, and continues to have, an approved rating by an approved rating organization; and

(d) no later than the time the dealer managed mutual fund files its annual financial statements, the manager of the dealer managed mutual fund files with the security regulatory authority or regulator the particulars of each investment made by the dealer managed mutual fund.”.

4. Section 4.2 is amended by adding the following after subsection (2):

“(3) Despite subsection (1), a dealer managed mutual fund may purchase a class of debt securities of an issuer from, or sell a class of a debt securities of an issuer to, the persons or companies referred to in paragraphs 1 to 4 of subsection (1) if, at the time of each transaction

(a) the independent review committee has approved the transaction under subsection 5.2(1) of NI 81-107;

(b) for a purchase or sale of a class of debt securities of an issuer other than a class of debt securities issued or fully and unconditionally guaranteed by the government of Canada or the government of a jurisdiction

(i) neither the manager of the dealer managed mutual fund nor its associates or affiliates is

(A) the issuer of the securities, or

(B) a promoter of the issuer of the securities; and

(ii) the security has been given, and continues to have, an approved credit rating by an approved credit rating organization; and

(c) no later than the time the dealer managed mutual fund files its annual financial statements, the manager of the dealer managed mutual fund files with the security regulatory authority or regulator the particulars of each investment made by the dealer managed mutual fund.”.

5. Section 5.1 is amended by repealing paragraph 5.1(d).

6. Section 5.3 is amended

(a) by adding the following after subsection 5.3(1):

“(2) Despite section 5.1, the approval of securityholders of a mutual fund is not required to be obtained for a change referred to in paragraph 5.1(f) if

- (a) the independent review committee has approved the reorganization or transfer of assets under subsection 5.2(1) of NI 81-107;
- (b) the mutual fund is being reorganized with, or its assets are being transferred to, another mutual fund to which this Instrument and NI 81-107 applies and that is managed by the manager, or an affiliate of the manager, of the mutual fund;
- (c) the reorganization or transfer of assets of the mutual fund will comply with the criteria in section 5.6;
- (d) the simplified prospectus of the mutual 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; and
- (e) the notice referred to in paragraph (d) is actually sent 60 days before the effective date of the change.”; and

- (b) by adding the following after section 5.3:

“5.3.1 Change of Auditor of the Mutual Fund - The auditor of the mutual fund may not be changed unless

- (a) the independent review committee approves the change of auditor under subsection 5.2(1) of NI 81-107;
- (b) the simplified prospectus of the mutual 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, and
- (c) the notice referred to in paragraph (b) is actually sent 60 days before the effective date of the change.”.

7. Section 5.6 is amended by deleting subparagraph (1)(e)(i) and substituting the following:

“(i) by the securityholders of the mutual fund in accordance with paragraph 5.1(f), if not proceeding with the change in accordance with subsection 5.3(2), and”.

8. This Instrument comes into force on the [].

**COMPANION POLICY 81-102CP -
TO NATIONAL INSTRUMENT 81-102 MUTUAL FUNDS
AMENDMENT INSTRUMENT**

1. Companion Policy 81-102CP Mutual Funds is amended by this Instrument.
2. Part 3 is amended

(a) by adding the following paragraph under section 3.4:

“Subsection 2.5(7) of the Instrument provides that certain investment restrictions in securities legislation, as defined in the Instrument, do not apply to investments in other mutual funds made in accordance with section 2.5. For greater certainty, the CSA note that the exemptions provided for in this section apply only with respect to a mutual fund’s investments in other mutual funds, and not for any other investment or transaction.”; and

(b) by adding the following after section 3.7:

“3.8 Prohibited Investments – (1) Subsection 4.1(4) permits a dealer managed mutual fund to make an investment otherwise prohibited by subsection 4.1(1) provided the independent review committee of the dealer managed mutual fund has approved the transaction under subsection 5.2(1) of NI 81-107. The CSA expects the independent review committee may contemplate giving its approval as a standing instruction, as contemplated in section 5.4 of NI 81-107.

(2) Subsection 4.2(3) permits a dealer managed mutual fund to purchase a class of debt securities of an issuer from, or sell a class of debt securities of an issuer to, the persons or companies referred to in paragraphs 1 to 4 of subsection 4.2(1) where the price payable for the security is not publicly available, provided the independent review committee has approved the transaction under subsection 5.2(1) of NI 81-107. The CSA expects the independent review committee may contemplate giving its approval as a standing instruction, as contemplated in section 5.4 of NI 81-107.

In providing its approval under paragraph 4.2(3)(a), the CSA expects the independent review committee to have satisfied itself that the price of the security is fair. This may be achieved by the independent review committee by considering the price of the security if listed by CanPx or TRACE, for example. Or, the independent review committee may satisfy itself by obtaining at least one quote from an independent, arm’s-length purchaser or seller, immediately before the purchase or sale.

3. Part 7 is amended by adding the following after section 7.4:

“7.5 Circumstances in Which Approval of Securityholders Not Required – (1)

Subsection 5.3(2) of the Instrument provides that the mutual fund's reorganization with, or transfer of assets to another mutual fund to which this Instrument and NI 81-107 applies and is managed by the manager or an affiliate of the manager of the mutual fund, may be carried out on the conditions described in the subsection without prior approval of the securityholders of the mutual fund.

(2) If the manager refers the change contemplated in subsection 5.3(2) to the mutual fund's independent review committee, and subsequently seeks the approval of the securityholders of the mutual fund, the CSA are of the view that the manager should include a description of the independent review committee's determination in the written notice to securityholders referred to in section 5.4 of this Instrument.

7.6 Change of Auditor – Section 5.3.1 of the Instrument requires that the independent review committee of the mutual fund give its prior approval to the manager before the auditor of the mutual fund may be changed.

7.7 Connection to NI 81-107 – There may be matters under section 5.1 that may also involve a conflict of interest matter under NI 81-107. The CSA are of the view that any matter under section 5.1 subject to review by the independent review committee should be referred by the manager to the independent review committee before seeking the approval of securityholders of the mutual fund. The CSA expects the manager to include in the written notice to securityholders referred to in subsection 5.4(2) of this Instrument a description of the independent review committee's determination.”.

4. This Instrument comes into force on [].