



The Saskatchewan Gazette

PUBLISHED WEEKLY BY AUTHORITY OF THE QUEEN'S PRINTER/PUBLIÉE CHAQUE SEMAINE SOUS L'AUTORITÉ DE L'IMPRIMEUR DE LA REINE

PART II/PARTIE II

Volume 115

REGINA, FRIDAY, JANUARY 4, 2019/REGINA, VENDREDI, 4 JANVIER 2019

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The Securities Commission (Adoption of National Instruments)

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SASKATCHEWAN REGULATIONS 99/2018*The Securities Act, 1988*

Section 154

Commission Order dated December 17, 2018

and

Minister's Order dated December 19, 2018

(Filed December 24, 2018)

Title

1 These regulations may be cited as *The Securities Commission (Adoption of National Instruments) (NI's 41-101, 81-101, 81-102, MI 81-104, NI's 81-106 and 81-107) Amendment Regulations, 2018*.

RRS c S-42.2 Reg 3 amended

2 *The Securities Commission (Adoption of National Instruments) Regulations* are amended in the manner set forth in these regulations.

Part V amended

3(1) Part V of the Appendix is amended in the manner set forth in this section.

(2) Section 1.1 is amended:

- (a) by repealing the definition of "commodity pool"; and
- (b) by repealing the definition of "precious metals fund".

(3) Section 1.3 is amended:

- (a) by adding "or" after paragraph (a);
- (b) by repealing paragraph (b); and
- (c) by striking out "or" before clause (c).

(4) The following subsection is added before section 5.2:

"(4) Despite subsection (1), a simplified prospectus for an alternative mutual fund must not be consolidated with a simplified prospectus of another mutual fund if the other mutual fund is not an alternative mutual fund".

(5) Subsection 6.1(3) is amended by adding "Alberta and" before "Ontario".**(6) The following subsection is added after subsection 7(5):**

"(6) If a commodity pool, as that term was defined in National Instrument 81-104 *Commodity Pools* on January 2, 2019, has filed a prospectus for which a receipt was granted on or before that date, this Instrument does not apply to that commodity pool until July 4, 2019".

(7) Form 81-101F1 CONTENTS OF SIMPLIFIED PROSPECTUS is amended:

(a) by adding the following item after item (14) of the general instructions:

“(14.1) Subsection 5.1(4) of National Instrument 81-101 states that a simplified prospectus of an alternative mutual fund must not be consolidated with a simplified prospectus of another mutual fund that is not an alternative mutual fund”;

(b) in Part A:

(i) by adding the following item after item 1.1(2):

“(2.1) If the mutual fund to which the simplified prospectus pertains is an alternative mutual fund, indicate that fact on the front cover”; **and**

(ii) by adding the following after item 1.2(2):

“(2.1) If the mutual funds to which the document pertains are alternative mutual funds, indicate that fact on the front cover”; **and**

(c) in Part B:

(i) by adding the following item after item (3) of the instructions under item 6:

“(4) If the mutual fund is an alternative mutual fund, describe the features of the mutual fund that cause it to fall within the definition of “alternative mutual fund” in National Instrument 81-102 Investment Funds. If those features include the use of leverage, disclose the sources of leverage (e.g., cash borrowing, short selling, use of derivatives) that the fund is permitted to use as well as the maximum aggregate exposure to those sources of leverage the alternative mutual fund is permitted to have, as a percentage calculated in accordance with section 2.9.1 of National Instrument 81-102 Investment Funds”;

(ii) by adding the following item after item 7(10):

“(11) In the case of an alternative mutual fund that borrows cash pursuant to subsection 2.6(2) of National Instrument 81-102 Investment Funds

(a) state that the alternative mutual fund is permitted to borrow cash and the maximum amount the fund is permitted to borrow, and

(b) briefly describe how borrowing will be used in conjunction with other strategies of the alternative mutual fund to achieve its investment objectives”;

(iii) by adding the following item after item 9(2):

“(2.1) In the case of an alternative mutual fund, include disclosure explaining that the alternative mutual fund is permitted to invest in asset classes and use investment strategies that are not permitted for other types of mutual funds and explain how these investment strategies could affect investors’ risk of losing money on their investment in the fund”; **and**

(iv) in item 9(7):

(A) by striking out “and” after paragraph (b);

(B) by adding “and” after paragraph (c); and

(C) by adding the following paragraph after paragraph (c):

“(d) borrowing arrangements”

(8) Form 81-101F2 Contents of “Annual Information Form is amended:

(a) by adding the following item after item 1.1(2):

“(2.1) If the mutual fund to which the annual information form pertains is an alternative mutual fund, indicate that fact on the front cover”; **and**

(b) by adding the following item after item 10.9.1:

“10.9.2 Cash Lender

(1) In the case of an alternative mutual fund, state the name of each person or company that has entered into an agreement to lend money to the alternative mutual fund or provides a line of credit or similar lending arrangement to the alternative mutual fund.

(2) State whether any person or company named in subsection (1) is an affiliate or associate of the manager of the alternative mutual fund”.

(9) Form 81-101F3 Contents of Fund Facts Document is amended in Part I:

(a) in item 1:

(i) by striking out “and” after paragraph (e);

(ii) by adding “and” after paragraph (f); and

(iii) by adding the following after paragraph (f):

“(g) if the fund facts document pertains to an alternative mutual fund, textbox disclosure using wording substantially similar to the following:

This mutual fund is an alternative mutual fund. It is permitted to invest in asset classes or use investment strategies that are not permitted for other types of mutual funds.

The specific strategies that differentiate this fund from other types of mutual funds include: *[list the features of the alternative mutual fund that cause it to fall within the definition of “alternative mutual fund” in National Instrument 81-102 Investment Funds]*.

[Explain how the listed investment strategies could affect investors’ risk of losing money on their investment in the alternative mutual fund.]”;

(b) by adding the following item after item 3(1):

“(1.1) In the case of an alternative mutual fund that uses leverage,

(a) disclose the sources of leverage, and

(b) disclose the maximum aggregate exposure to those sources of leverage the alternative mutual fund is permitted to have”; **and**

(c) by adding the following item after item (3) of the instructions under item 3:

“(3.1) The alternative mutual fund’s aggregate exposure to the sources of leverage must be expressed as a percentage calculated in accordance with section 2.9.1 of National Instrument 81-102 Investment Funds”.

Part VI amended

4(1) Part VI of the Appendix is amended in the manner set forth in this section.

(2) Section 1.1 is amended:

(a) by repealing the definition of “acceptable clearing corporation”;

(b) by adding the following definition after the definition of “allocation service”:

“ ‘alternative mutual fund’ means a mutual fund, other than a precious metals fund, that has adopted fundamental investment objectives that permit it to invest in physical commodities or specified derivatives, to borrow cash or engage in short selling in a manner not permitted for other mutual funds under this Instrument”;

(c) in the definition of “cash cover”:

(i) by striking out “a mutual fund” and substituting “an investment fund” and

(ii) by striking out “the mutual fund” wherever it appears and in each case substituting “the investment fund”;

(d) by adding the following definition after the definition of “cash equivalent”:

“ ‘cleared specified derivative’ means a bilateral specified derivative that is accepted for clearing by a regulated clearing agency”;

(e) in the definition of “clearing corporation” by striking out “options or standardized futures” and substituting “specified derivatives”;

(f) by repealing the definition of “fixed portfolio ETF”;

(g) by adding the following definition before the definition of “floating rate evidence of indebtedness”:

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

(a) has fundamental investment objectives that 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”;

(h) in the definition of “illiquid asset”:

(i) in paragraph (a) by replacing “mutual fund” with “investment fund”; and

(ii) in paragraph (b) by striking out “a mutual fund, the resale of which is prohibited by a representation, undertaking or agreement by the mutual fund or by the predecessor in title of the mutual fund” and substituting “an investment fund”;

(i) by repealing the definition of “Joint Regulatory Financial Questionnaire and Report”;

(j) by adding the following definition after the definition of “NI 81-107”:

“**‘non-redeemable investment fund’** has the meaning ascribed to that term in National Instrument 81-106 *Investment Fund Continuous Disclosure*”;

(k) by repealing the definition of “permitted gold certificate”;

(l) by adding the following definitions after the definition of “permitted index”:

“**‘permitted precious metal’** means gold, silver, platinum or palladium;

“**‘permitted precious metal certificate’** means a certificate representing a permitted precious metal if the permitted precious metal is held in Canada in the form of bars or wafers and is

(a) available for delivery in Canada, free of charge, to or to the order of the holder of the certificate,

(b) in the case of a certificate representing gold, of a minimum fineness of 995 parts per 1000,

(c) in the case of a certificate representing silver, platinum or palladium, of a minimum fineness of 999 parts per 1000, and

(d) if not purchased from a bank listed in Schedule, I, II or III of the *Bank Act* (Canada), fully insured against loss and bankruptcy by an insurance company licensed under the laws of Canada or a jurisdiction”;

(m) in the definition of “physical commodity” by adding “electricity, water, or,” before “in an original or processed state”;

(n) by adding the following definition after the definition of “portfolio asset”:

“**‘precious metals fund’** means a mutual fund that has adopted a fundamental investment objective to invest primarily in one or more permitted precious metals”;

(o) by repealing the definition of “public quotation” and substituting the following:

“‘**public quotation**’ includes, for the purposes of calculating the amount of illiquid assets held by an investment fund, any quotation of a price for any of the following:

- (a) a fixed income security made through the inter-dealer bond market,
- (b) a foreign currency forward or foreign currency option in the interbank market”;

(p) by adding the following definition after the definition of “qualified security”:

“‘**regulated clearing agency**’ has the meaning ascribed to that term in National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*”; **and**

(q) in the definition of “restricted security” by striking out “mutual fund or by the mutual fund’s predecessor” and substituting “investment fund or by the investment fund’s predecessor”.

(3) Section 1.2 is amended:

(a) by repealing paragraph 1.2(3)(a) and substituting “section 2.6.1 and sections 2.7 to 2.17”; and

(b) by adding the following subsection after subsection (4):

“(5) Despite paragraph (1)(a.1), the following provisions do not apply to a non-redeemable investment fund that was established before October 4, 2018, unless the fund has filed a prospectus for which a receipt was issued after that date:

- (a) sections 2.1 and 2.4,
- (b) paragraphs 2.6(1)(a), (b) and (c), and subsection 2.6(2), and
- (c) sections 2.6.1, 2.6.2 and 2.9.1”.

(4) Section 2.1 is amended:

(a) by repealing subsection (1) and substituting the following:

“(1) A mutual fund, other than an alternative mutual fund, must not purchase a security of an issuer, enter into a specified derivatives transaction or purchase an index participation unit if, immediately after the transaction, more than 10% of its net asset value, would be invested in securities of any one issuer.

“(1.1) An alternative mutual fund or a non-redeemable investment fund must not purchase a security of an issuer, enter into a specified derivatives transaction or purchase an index participation unit if, immediately after the transaction, more than 20% of its net asset value would be invested in securities of any one issuer”;

(b) in subsection (2):

(i) in the portion preceding clause (a) by striking out “Subsection (1) does” and substituting “Subsections (1) and (1.1) do”;

(ii) in paragraph (c) by striking out “a mutual fund” and substituting “an investment fund”;

(iii) in paragraph (d) by striking out “a mutual fund” and substituting “an investment fund”; and

(iv) in paragraph (e) by striking out “fixed portfolio ETF” and substituting “fixed portfolio investment fund”; and

(c) by repealing subsections (3) and (4) and substituting the following:

“(3) For the purposes of this section, for each long position in a specified derivative that is held by an investment fund for a purpose other than hedging and for each index participation unit held by the investment fund, the investment fund is considered to hold directly the underlying interest of that specified derivative or its proportionate share of the securities held by the issuer of the index participation unit.

“(4) Despite subsection (3), for the purposes of this section, an investment fund is considered to not hold a security or instrument if that security or instrument is a component of, but represents less than 10% of,

(a) a stock or bond index that is the underlying interest of a specified derivative, or

(b) the securities held by the issuer of an index participation unit”.

(5) Section 2.3 is amended:

(a) in subsection (1):

(i) in the portion preceding paragraph (a) by adding “do any of the following” after “must not”;

(ii) in paragraph (c) by replacing “10 percent” with “10%”;

(iii) by repealing paragraph (d) and substituting the following:

“(d) purchase a precious metal certificate, other than a permitted precious metal certificate”;

(iv) by repealing paragraph (e) and substituting the following:

“(e) purchase a permitted precious metal, a permitted precious metal certificate, or a specified derivative of which the underlying interest is a physical commodity if, immediately after the purchase, more than 10% of the mutual fund’s net asset value would be made up of permitted precious metals, permitted precious metal certificates, or specified derivatives of which the underlying interests are physical commodities”;

(v) by repealing paragraph (f) and substituting the following:

“(f) purchase a physical commodity, except to the extent permitted by paragraph (d) or (e)”

(vi) by adding “or” after clause (g);

(vii) by repealing paragraph (h); and

(viii) by striking out “or” before clause (i);

(b) by adding the following subsections after subsection (1):

“(1.1) Paragraphs (1)(d), (e) and (f) do not apply to an alternative mutual fund.

“(1.2) Paragraph (1)(e) does not apply to a precious metals fund with respect to purchasing a permitted precious metal, a permitted precious metal certificate or a specified derivative of which the underlying interest is one or more permitted precious metals”; **and**

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

“(3) For the purposes of this section, for each long position in a specified derivative that is held by an investment fund for a purpose other than hedging and for each index participation unit or underlying investment fund held by the investment fund, the investment fund is considered to hold directly the underlying interest of that specified derivative or its proportionate share of the assets held by the issuer of the index participation unit or underlying investment fund.

“(4) Despite subsection (3), for the purposes of this section, an investment fund is considered to not hold a security or instrument if that security or instrument is a component of, but represents less than 10% of,

(a) a stock or bond index that is the underlying interest of a specified derivative, or

(b) the securities held by the issuer of an index participation unit or underlying investment fund”.

(6) Section 2.4 is amended:

(a) in subsection (1) by striking out “percent” and substituting “%”;

(b) in subsection (2):

(i) by striking out “must not have invested,” and substituting “must not hold.”; and

(ii) by striking out “percent” and substituting “%”;

(c) in subsection (3) by striking out “percent” wherever it appears and in each case substituting “%”; and

(d) by adding the following subsections after subsection (3):

“(4) A non-redeemable investment fund must not purchase an illiquid asset if, immediately after the purchase, more than 20% of its net asset value would be made up of illiquid assets.

“(5) A non-redeemable investment fund must not hold, for a period of 90 days or more, more than 25% of its net asset value in illiquid assets.

“(6) If more than 25% of the net asset value of a non-redeemable investment fund is made up of illiquid assets, the non-redeemable investment fund must, as quickly as commercially reasonable, take all necessary steps to reduce the percentage of its net asset value made up of illiquid assets to 25% or less”.

(7) Subsection 2.5 is amended:

(a) in subsection (2):

(i) by repealing paragraph (a) and substituting the following:

“(a) if the investment fund is a mutual fund, other than an alternative mutual fund, either of the following applies:

(i) the other investment fund is a mutual fund, other than an alternative mutual fund, that is subject to this Instrument;

(ii) the other investment fund is an alternative mutual fund or a non-redeemable investment fund that is subject to this Instrument and, at the time of the purchase of that security, the investment fund holds no more than 10% of its net asset value in securities of alternative mutual funds and non-redeemable investment funds”;

(ii) in paragraph (a.1):

(A) in the portion preceding subparagraph (i) by adding “an alternative mutual fund or” before “a non-redeemable investment fund”; and

(B) in subparagraph (ii) by adding “an alternative mutual fund or” before “a non-redeemable investment fund”;

(iii) by repealing paragraph (c) and substituting the following:

“(c) the other investment fund is a reporting issuer in a jurisdiction”; and

(iv) by repealing paragraph (c.1);

(b) in subsection (3) by striking out “(a.1), (c) and (c.1)” and substituting “(a.1) and (c)”; and

(c) by repealing subsection (5) and substituting the following:

“(5) Paragraphs (2)(e) and (f) do not apply to brokerage fees incurred for the purchase or sale of securities issued by an investment fund that are listed for trading on a stock exchange”.

(8) Section 2.6 is amended:

(a) in the heading by adding “Borrowing and Other” before “Investment Practices”;

(b) by striking out “An investment fund must not” and substituting “(1) An investment fund must not”;

(c) in paragraph (1)(a) by striking out “in the case of a mutual fund,”;

(d) in subparagraph (1)(a)(i):

(i) by striking out “mutual fund” wherever it appears and in each case substituting “investment fund”; and

(ii) by striking out “five percent” and substituting “5%”;

- (e) in subparagraph (1)(a)(ii) by striking out “mutual fund” and substituting “investment fund”;**
 - (f) in subparagraph (1)(a)(iii) by striking out “mutual fund” and substituting “investment fund”;**
 - (g) in subparagraph (1)(a)(iv) by adding “or a non-redeemable investment fund” after “continuous distribution”;**
 - (h) in paragraph (1)(b) by striking out “in the case of a mutual fund.”;**
 - (i) in paragraph (1)(c) by striking out “in the case of a mutual fund.”; and**
 - (j) by adding the following subsection after subsection (1):**
 - “(2) Despite paragraphs (1)(a) and (b), an alternative mutual fund or a non-redeemable investment fund may borrow cash or provide a security interest over any of its portfolio assets if each of the following apply:
 - (a) any borrowing of cash is
 - (i) from an entity described in section 6.2 or 6.3, and
 - (ii) if the lender is an affiliate or associate of the investment fund manager of the alternative mutual fund or non-redeemable investment fund, under a borrowing agreement approved by the independent review committee as required under section 5.2 of NI 81-107;
 - (b) the borrowing agreement is in accordance with normal industry practice and on standard commercial terms for the type of transaction;
 - (c) the value of cash borrowed, when aggregated with the value of all outstanding borrowing by the alternative mutual fund or non-redeemable investment fund, does not exceed 50% of the alternative mutual fund or non-redeemable investment fund’s net asset value”.
- (9) Subsection 2.6.1(1) is amended:**
- (a) in the portion preceding paragraph (a) by striking out “A mutual fund” and substituting “An investment fund”;**
 - (b) in subparagraph (b)(i) by striking out “mutual fund” and substituting “investment fund”; and**
 - (c) by repealing paragraph (c) and substituting the following:**
 - “(c) at the time the investment fund sells the security short,
 - (i) the investment fund has borrowed or arranged to borrow from a borrowing agent the security that is to be sold under the short sale,
 - (ii) if the investment fund is a mutual fund, other than an alternative mutual fund, the aggregate market value of the 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,

(iii) if the investment fund is a mutual fund, other than an alternative mutual fund, the aggregate market value of the securities sold short by the mutual fund does not exceed 20% of the net asset value of the mutual fund,

(iv) if the investment fund is an alternative mutual fund or a non-redeemable investment fund, the aggregate market value of the securities of the issuer of the securities sold short by the investment fund, other than government securities sold short by an alternative mutual fund or non-redeemable investment fund, does not exceed 10% of the net asset value of the investment fund, and

(v) if the investment fund is an alternative mutual fund or a non-redeemable investment fund, the aggregate market value of the securities sold short by the investment fund does not exceed 50% of the net asset value of the investment fund”.

(10) Subsection 2.6.1(2) is amended:

(a) by striking out “A mutual fund” and substituting “A mutual fund, other than an alternative mutual fund”; and

(b) by striking out “market value of all” and substituting “market value of the”.

(11) Subsection 2.6.1(3) is amended by striking out “A mutual fund” and substituting “A mutual fund, other than an alternative mutual fund.”.

(12) The following section is added after section 2.6.1:

“2.6.2 Total Borrowing and Short Sales

(1) Despite sections 2.6 and 2.6.1, an investment fund must not borrow cash or sell securities short if, immediately after entering into a cash borrowing or short selling transaction, the aggregate value of cash borrowed combined with the aggregate market value of the securities sold short by the investment fund would exceed 50% of the investment fund’s net asset value.

(2) Despite sections 2.6 and 2.6.1, if the aggregate value of cash borrowed combined with the aggregate market value of the securities sold short by the investment fund exceeds 50% of the investment fund’s net asset value, the investment fund must, as quickly as is commercially reasonable, take all necessary steps to reduce the aggregate value of cash borrowed combined with the aggregate market value of securities sold short to 50% or less of the investment fund’s net asset value”.

(13) Section 2.7 is amended:

(a) in subsection (1):

(i) in the portion preceding paragraph (a) by striking out “A mutual fund” and substituting “An investment fund”;

(ii) in paragraph (b) by adding “forward” before “contract”;

(iii) in paragraph (c) by adding “forward” before “contract”; and

(iv) by adding the following paragraph after paragraph (c):

“(d) the option, debt-like security, swap or forward contract is a cleared specified derivative”;

(b) by repealing subsection (2) and substituting the following:

“(2) If the credit rating of an option, debt-like security, swap or forward contract, or the credit rating of the equivalent debt of the writer or guarantor of the option, debt-like security, swap or forward contract, falls below the level of designated rating while the option, debt-like security, swap or forward contract is held by an investment fund, the investment fund must take the steps that are reasonably required to close out its position in the option, debt-like security, swap or forward contract in an orderly and timely fashion, unless either of the following applies:

(a) the option is a clearing corporation option;

(b) the option, debt-like security, swap or forward contract is a cleared specified derivative”;

(c) in subsection (3) by striking out “a mutual fund” and substituting “an investment fund”;

(d) by repealing subsection (4) and substituting the following:

“(4) The mark-to-market value of the exposure of an investment fund under its specified derivatives positions with any one counterparty, calculated in accordance with subsection (5), must not exceed, for a period of 30 days or more, 10% of the net asset value of the investment fund unless either of the following applies:

(a) the specified derivative is a cleared specified derivative;

(b) 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 specified derivative, has a designated rating”;

(e) in subsection (5):

(i) in the portion preceding paragraph (a) by striking out “a mutual fund” and substituting “an investment fund,”;

(ii) in paragraph (a) by striking out “the mutual fund” wherever it appears and in each case substituting “the investment fund”; and

(iii) in paragraph (b) by striking out “the mutual fund”; and substituting “the investment fund”; and

(f) by adding the following subsection after subsection (5):

“(6) Subsections (1), (2) and (3) do not apply to an alternative mutual fund or a non-redeemable investment fund”.

(14) Section 2.8 is amended by adding the following subsection before subsection (1):

“(0.1) This section does not apply to an alternative mutual fund”.

(15) The following section is added after section 2.9:

“2.9.1 Aggregate Exposure to Borrowing, Short Selling and Specified Derivatives

(1) An alternative mutual fund or non-redeemable investment fund's aggregate exposure to cash borrowing, short selling and specified derivatives transactions must not exceed 300% of the fund's net asset value.

(2) For the purposes of subsection (1), an alternative mutual fund or non-redeemable investment fund's aggregate exposure is the sum of the following:

(a) the aggregate value of the alternative mutual fund's or non-redeemable investment fund's outstanding indebtedness under any borrowing agreements to which subsection 2.6(2) applies,

(b) the aggregate market value of all securities sold short by the alternative mutual fund or non-redeemable investment fund as permitted by section 2.6.1, and

(c) the aggregate notional amount of the alternative mutual fund's or non-redeemable investment's fund's specified derivatives positions, minus the aggregate notional amount of the specified derivative positions that are hedging transactions.

(3) For the purposes of this section the alternative mutual fund or non-redeemable investment fund must include in its calculation its proportionate share of the assets of any underlying investment fund for which a similar calculation is required.

(4) An alternative mutual fund or non-redeemable investment fund must determine its aggregate exposure in accordance with subsection (2) as of the close of business of each day on which it calculates a net asset value.

(5) If the alternative mutual fund or non-redeemable investment fund's aggregate exposure as determined in accordance with subsection (2) exceeds 300% of its net asset value, the alternative mutual fund or non-redeemable investment fund must, as quickly as is commercially reasonable, take all necessary steps to reduce the aggregate exposure to 300% its net asset value or less”.

(16) Section 2.11 is amended by adding the following subsection before subsection (1):

“(0.1) This section does not apply to an alternative mutual fund”.

(17) Section 6.2 is amended in paragraph 3.(a) by striking out “that have been made public,”.

(18) Section 6.3 is amended in paragraph 3.(a) by striking out “that have been made public,”.

(19) Section 6.8 is amended:

- (a) in the heading by adding “Borrowing,” before “Derivatives”;**
- (b) in subsection (1):**
 - (i) by striking out “futures or” and substituting “futures,”;**
 - (ii) by adding “or cleared specified derivatives with a member of a regulated clearing agency or” after “standardized futures”;**
 - (iii) by adding “member or” after “margin already held by the”; and**
 - (iv) by striking out “10 percent” and substituting “10%”;**
- (c) in subsection (2):**
 - (i) by repealing the portion preceding paragraph (a) and substituting the following:**

“(2) An investment fund may deposit portfolio assets with a member of a regulated clearing agency or with a dealer as margin for transactions outside Canada involving clearing corporation options, options on futures, standardized futures or cleared specified derivatives if”;

- (ii) by repealing paragraph (a) and substituting the following:**

- “(a) the member or dealer is a member of a regulated clearing agency, futures exchange or stock exchange, and, as a result in any case, is subject to a regulatory audit”

- (iii) in paragraph (b):**

- (A) by adding “member or” before “dealer”; and**
 - (B) by striking out “that have been made public”;**

- (iv) in paragraph (c):**

- (A) by adding “member or” before “dealer”; and**
 - (B) by striking out “10 percent” and substituting “10%”;**

- (d) by adding the following subsection after subsection (3):**

“(3.1) An investment fund may deposit with its lender, portfolio assets over which it has granted a security interest in connection with a borrowing agreement to which section 2.6 applies”.

- (e) in subsection (4) by striking out “(1), (2) or (3)” and substituting “(1), (2), (3) or (3.1)” ; and**

- (f) in subsection (5) by adding “borrowing,” before “securities lending”.**

(20) Section 6.8.1 is amended:

(a) by repealing subsection (1) and substituting the following:

“(1) Unless the borrowing agent is the investment fund’s custodian or sub-custodian, if an investment 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 investment fund,

(a) in the case of a mutual fund, other than an alternative mutual fund, exceed 10% of the net asset value of the mutual fund at the time of deposit, and

(b) in the case of an alternative mutual fund or a non-redeemable investment fund, exceed 25% of the net asset value of the alternative mutual fund or non-redeemable investment fund at the time of deposit”; and

(b) in paragraph (3)(b) by striking out “that have been made public”.

(21) Section 7.1 is amended:

(a) by striking out “A mutual fund must not pay” and substituting “(1) A mutual fund must not pay”;

(b) in subsection (1) in the portion preceding paragraph (a):

(i) by striking out “A mutual fund” and substituting “A mutual fund, other than an alternative mutual fund.”; and

(ii) by striking out “, unless” and substituting “unless”; and

(c) by adding the following subsection after subsection (1):

“(2) An alternative mutual fund must not pay, or enter into arrangements that would require it to pay, and must not sell securities of an alternative mutual fund on the basis that an investor would be required to pay, a fee that is determined by the performance of the alternative mutual fund unless

(a) the payment of the fee is based on the cumulative total return of the alternative mutual fund for the period that began immediately after the last period for which the performance fee was paid, and

(b) the method of calculating the fee is described in the alternative mutual fund’s prospectus”.

(22) Paragraph 9.1.1(b) is amended by adding “short” before “position”.

(23) Section 10.1 is amended by adding the following subsection after subsection (2):

“(2.1) If disclosed in its prospectus, an alternative mutual fund may include, as part of the requirements contemplated in subsection (2), a provision that securityholders of the alternative mutual fund may not redeem their securities for a period up to 6 months after the date on which the receipt is issued for the initial prospectus of the alternative mutual fund”.

(24) Section 10.3 is amended by adding the following subsection after subsection (4):

“(5) Despite subsection (1), an alternative mutual fund may redeem securities of the alternative mutual fund at a price that is equal to the net asset value for those securities determined on the first or second business day after the date of receipt by the alternative mutual fund of the redemption order if

(a) the alternative mutual fund has established a policy providing for the redemption price to be calculated on such a basis, and

(b) the policy has been disclosed in the alternative mutual fund’s prospectus before the policy’s implementation”.

(25) Subsection 10.4(1.1) is amended by adding “or an alternative mutual fund” after “continuous distribution”.

(26) Subsection 15.13(2) is amended:

(a) **by striking out “a commodity pool” wherever it appears and in each case substituting “an alternative mutual fund”; and**

(b) **by striking out “as defined in National Instrument 81-104 *Commodity Pools*”.**

(27) The following section is added after section 20.4:

“20.5 Transitional

If a commodity pool, as that term was defined in National Instrument 81-104 *Commodity Pools* on January 2, 2019, has filed a prospectus for which a receipt was granted on or before that date, this Instrument does not apply to that commodity pool until July 4, 2019”.

(28) “Appendix A titled “Futures Exchanges for the Purpose of Subsection 2.7(4) – Derivative Counterparty Exposure Limits” is repealed.

(29) “Appendix F titled “Investment Risk Classification Methodology” is amended in the Commentary under Item 1 by adding the following after (2):

“(3) *In deciding whether to exercise the discretion to increase a mutual fund’s investment risk level as permitted in subsection (2) above, consideration should be given as to whether the standard deviation calculation applied under the Investment Risk Classification Methodology may result in a risk level that is below the manager’s own expectations for the mutual fund. This can occur, for example, when a mutual fund employs investment strategies that produce an atypical or non-normal distribution of performance results. In such circumstances mutual funds are encouraged to consider supplementing the Investment Risk Classification Methodology with other factors or risk metrics in order to determine whether it would be appropriate to make an upward adjustment of the mutual fund’s risk level to better reflect the features of the mutual fund”.*

Part XII amended

5(1) Part XII of the Appendix is amended in the manner set forth in this section.

(2) Section 1.1 is amended by adding the following definition after the definition of “alternative credit support”:

“‘**alternative mutual fund**’ has the same meaning as in section 1.1 of NI 81-102”.

(3) The following section is added after section 20.3:

“20.4 Transitional

If a commodity pool, as that term was defined in National Instrument 81-104 *Commodity Pools* on January 2, 2019, has filed a prospectus for which a receipt was granted on or before that date, this Instrument does not apply to the commodity pool until July 4, 2019”.

(4) Form 41-101F2 Information Required in an Investment Fund Prospectus is amended:

(a) in item 1.3(1) by striking out “commodity pool” and substituting “alternative mutual fund”;

(b) by adding the following after item 1.3(3):

“(4) If the mutual fund to which the prospectus pertains is an alternative mutual fund, include a statement explaining that the fund is permitted to invest in asset classes or use investment strategies that are not permitted for other types of mutual funds and explain how exposure to the asset classes or the adoption of the investment strategies may affect investors’ risk of losing money on their investment in the fund”;

(c) in item 1.11(3) by striking out “commodity pool” and substituting “alternative mutual fund”;

(d) by repealing item 1.12:

(e) by repealing paragraph (e) of item 3.3(1) and substituting the following:

“(e) the use of leverage, including all of the following:

(i) the maximum aggregate exposure to borrowing, short selling and specified derivatives the investment fund is permitted to have, expressed as a percentage calculated in accordance with section 2.9.1 of NI 81-102,

(ii) a brief description of any other restrictions on the investment fund’s use of leverage, and

(iii) a brief description of any limits that apply to each source of leverage”;

(f) by adding the following after instruction (3) below item 5:

“(4) If the mutual fund is an alternative mutual fund, describe the features of the mutual fund that cause it to fall within the definition of “alternative mutual fund” in NI 81-102. If those features involve the use of leverage, disclose the sources of leverage (i.e., borrowing, short selling, use of derivatives) the alternative mutual fund is permitted to use and the maximum aggregate exposure to those sources of leverage the alternative mutual fund is permitted to have, as a percentage calculated in accordance with section 2.9.1 of NI 81-102”;

(g) by repealing paragraph (b) of item 6.1(1) and substituting the following:

“(b) the use of leverage, including both of the following:

- (i) a brief description of any restrictions on the investment fund’s use of leverage;
- (ii) a brief description of any limits that apply to each source of leverage”;

(h) by adding the following item after item 6.1(6):

“(7) In the case of an investment fund that borrows cash in accordance with subsection 2.6 (2) of NI 81-102,

- (a) state that the investment fund is permitted to borrow cash and the maximum amount the fund is permitted to borrow, and
- (b) briefly describe how borrowing will be used in conjunction with other strategies of the investment fund to achieve its investment objectives and the material terms of the borrowing arrangements”;

(i) by adding the following item after item 19.11:

“19.12 Lender

(1) State the name of each person or company that has entered into an agreement to lend money to the investment fund or provides a line of credit or similar lending arrangement to the investment fund.

(2) State whether the person or company named in subsection (1) is an affiliate or associate of the manager of the investment fund”; **and**

(j) in paragraph (f) of item 23.1 by striking out “a commodity pool” and substituting “an alternative mutual fund”.

(5) Form 41-101F4 Information Required in an ETF Facts Document is amended in Part 1:

(a) by repealing the instructions below item 1 and substituting the following:

“INSTRUCTIONS:

(1) The date for an ETF facts document that is filed with a preliminary prospectus or final prospectus must be the date of the preliminary prospectus or final prospectus, respectively. The date for an ETF facts document that is filed with a pro forma prospectus must be the date of the anticipated final prospectus. The date for an amended ETF facts document must be the date on which it is filed.

(2) If the investment objectives of the ETF are to track a multiple (positive or negative) of the daily performance of a specified underlying index or benchmark, provide textbox disclosure in bold type using wording substantially similar to the following:

This ETF is an alternative mutual fund. It is permitted to invest in asset classes or use investment strategies that are not permitted for other types of mutual funds.

This ETF is highly speculative. It uses leverage which magnifies gains and losses. It is intended for use in daily or short-term trading strategies by sophisticated investors. If you hold this ETF for more than one day, your return could vary considerably from the ETF's daily target return. Any losses may be compounded. Don't buy this ETF if you are looking for a longer-term investment.

(3) *If the investment objectives of the ETF are to track the inverse performance of a specified underlying index or benchmark, provide textbox disclosure in bold type using wording substantially similar to the following:*

This ETF is an alternative mutual fund. It is permitted to invest in asset classes or use investment strategies that are not permitted for other types of mutual funds.

This ETF is highly speculative. It is intended for use in daily or short-term trading strategies by sophisticated investors. If you hold this ETF for more than one day, your return could vary considerably from the ETF's daily target return. Any losses may be compounded. Don't buy this ETF if you are looking for a longer-term investment.

(4) *If the ETF is an alternative mutual fund and Instruction (2) or (3) does not apply, provide textbox disclosure in bold type using wording substantially similar to the following:*

This ETF is an alternative mutual fund. It has the ability to invest in asset classes or use investment strategies that are not permitted for other types of mutual funds.

The specific features that differentiate this fund from other types of mutual funds include: [list the asset classes the alternative mutual fund invests in and the investment strategies used by the alternative mutual fund that cause it to fall within the definition of "alternative mutual fund"]

[Explain how the listed features may affect investors' risk of losing money on their investment in the alternative mutual fund];

(b) by adding the following after item 3(1):

“(1.1) For an alternative mutual fund that uses leverage

(a) disclose the sources of leverage, and

(b) disclose the maximum aggregate exposure to those sources of leverage the alternative mutual fund is permitted to have”; **and**

(c) by adding the following after subsection (3) of the instructions below item 3:

“(3.1) *The alternative mutual fund's aggregate exposure to sources of leverage must be expressed as a percentage calculated in accordance with section 2.9.1 of NI 81-102*”.

Part XXVI amended

6(1) Part XXVI of the Appendix is amended in the manner set forth in this section.

(2) The title is amended by striking out “MULTI-LATERAL INSTRUMENT 81-104 COMMODITY POOLS” and substituting “MULTI-LATERAL INSTRUMENT 81-104 ALTERNATIVE MUTUAL FUNDS”.

(3) Subsection 1.1(1) is amended:

(a) by adding the following definition before the definition of “Canadian Securities Course”:

“‘alternative mutual fund’ has the same meaning as in section 1.1 of NI 81-102”;

(b) by repealing the definition of “commodity pool”;

(c) by repealing the definition of “independent review committee”;

(d) by repealing the definition of “precious metals fund”; and

(e) by adding “and” after the definition of “Derivatives Fundamentals Course”.

(4) Section 1.2 is amended:

(a) in paragraph (a) in the portion preceding subclause (i) by striking out “a commodity pool” and substituting “an alternative mutual fund”;

(b) in subparagraph (a)(i) by striking out “commodity pool” and substituting “alternative mutual fund”; and

(c) in paragraph (b):

(i) by striking out “a commodity pool” and substituting “an alternative mutual fund”; and

(ii) by striking out “or pertaining to the filing of a prospectus to which subsection 3.2(1) applies”.

(5) Section 1.3 is amended:

(a) in subsection (1):

(i) by striking out “a commodity pool” and substituting “an alternative mutual fund”; and

(ii) by striking out “separate commodity pool” with “separate alternative mutual fund”; and

(b) by repealing subsection (2).

(6) Parts 2 and 3 are repealed.

(7) Section 4.1 is amended:

(a) in the portion preceding paragraph (1)(a) by striking out “a commodity pool” and substituting “an alternative mutual fund”;

(b) in paragraph (1)(d) by striking out “commodity pools” and substituting “alternative mutual funds”;

- (c) **in subsection (2):**
 - (i) **by striking out** “a commodity pool” **and substituting** “an alternative mutual fund”; **and**
 - (ii) **by striking out** “commodity pools” **and substituting** “alternative mutual funds”; **and**
- (d) **in subsection (3) by striking out** “a commodity pool” **wherever it appears and in each case substituting** “an alternative mutual fund”.
- (8) **Parts 5 and 6 are repealed.**
- (9) **Part 8 is repealed.**
- (10) **Section 11.2 is repealed.**

Part XL amended

- 7(1) Part XL of the Appendix is amended in the manner set forth in this section.
- (2) **Subsection 1.3(3) is amended:**
 - (a) **by striking out** “National Instrument 81-104 *Commodity Pools* or”; **and**
 - (b) **by striking** “those Instruments” **and substituting** “that Instrument”.
- (3) **The following section is added after section 3.11:**

“3.12 Disclosure of Use of Leverage – (1) An investment fund that uses leverage must disclose the following information in its financial statements:

 - (a) a brief explanation of the sources of leverage including cash borrowing, short selling or use of specified derivatives, used during the reporting period covered by the financial statements,
 - (b) the lowest and highest level of the aggregate exposure to those sources of leverage in the period, and
 - (c) a brief explanation of the significance to the investment fund of the lowest and highest levels of the aggregate exposure to those sources of leverage.

(2) For the purposes of subsection (1), an investment fund must calculate its aggregate exposure to those sources of leverage in accordance with section 2.9.1 of National Instrument 81-102 *Investment Funds*”.
- (4) **Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance is amended in item 2.3 of Part B:**
 - (a) **by adding the following subsection after subsection (2):**

“(3) An investment fund that uses leverage must disclose,

 - (a) a brief explanation on the sources of leverage including cash borrowing, short selling or use of specified derivatives, used during the reporting period,
 - (b) the lowest and highest level of aggregate exposure to those sources of leverage in the period, and

(c) a brief explanation of the significance of the lowest and highest levels of aggregate exposure to those sources of leverage to the investment fund including the impact of the use of specified derivatives for hedging purposes”; **and**

(b) by repealing the Instruction and substituting the following:

“INSTRUCTIONS:

(1) Explain the nature of and reasons for changes in the investment fund’s performance. Do not only disclose the amount of change in a financial statement item from period to period. Avoid the use of boilerplate wording. Your discussion must be prepared in a manner that will assist a reasonable reader to understand the significant factors that have affected the investment fund’s performance.

(2) For the purposes of the disclosure required in Item 2.3(3)(b), an investment fund must calculate its aggregate exposure to sources of leverage in accordance with section 2.9.1 of National Instrument 81-102 Investment Funds.

(3) In discussing the impact of the use of specified derivatives for hedging purposes on the investment fund’s calculation of its aggregate exposure to sources of leverage, the fund must discuss by how much the aggregate exposure was reduced by subtracting the notional value of the fund’s specified derivatives positions that are hedging transactions as is contemplated in paragraph 2.9.1(2)(c) of National Instrument 81-102 Investment Funds”

Part XLV amended

8(1) Part XLV of the Appendix is amended in the manner set forth in this section.

(2) Subsection 5.2(1) is amended:

(a) by striking out “or” after paragraph (b);

(b) by adding “or” after paragraph (c); and

(c) by the adding the following paragraph after paragraph (c):

“(d) a transaction in which an investment fund intends to borrow cash from a person or company that is an associate or affiliate of the investment fund manager”

(3) Section 1 of the Commentary below section 5.2 is amended by adding “Part 2 and” after “Part 6 of this Instrument or”.

Coming into force

9(1) Subject to subsection (2), these regulations come into force on January 3, 2019.

(2) If these regulations are filed with the Registrar of Regulations after January 3, 2019, these regulations come into force on the day on which they are filed with the Registrar of Regulations.