

6.1.2 Amendments to NI 81-102 Mutual Funds and Companion Policy 81-102CP

**AMENDMENT TO
NATIONAL INSTRUMENT 81-102
MUTUAL FUNDS**

PART 1 AMENDMENTS

1.1 Amendments

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

(2) Section 1.1 is amended by

(a) the deletion of the definition of “approved credit rating” and the substitution of the following:

“approved credit rating” means, for a security or instrument, a rating at or above one of the following rating categories issued by an approved credit rating organization for that security or instrument or a category that replaces one of the following rating categories if

(a) there has been no announcement by the approved credit rating organization of which the mutual fund or its manager is or ought to be aware that the rating of the security or instrument to which the approved credit rating was given may be down-graded to a rating category that would not be an approved credit rating, and

(b) no approved credit rating organization has rated the security or instrument in a rating category that is not an approved credit rating:

Approved Credit Rating Organization	Commercial Paper/ Short Term Debt	Long Term Debt
Dominion Bond Rating Service Limited	R-1-L	A
Fitch IBCA, Duff & Phelps	F1	A
Moody's Investors Service	P-1	A2
Standard & Poor's	A-1(Low)	A”

(b) the deletion of the definition of “approved credit rating organization” and the substitution of the following:

“approved credit rating organization” means each of Dominion Bond Rating Service Limited, Fitch IBCA, Duff & Phelps, Moody's Investors Service, Standard & Poor's and any of their respective successors;”;

(c) the addition of the following definition, after the definition of “book-based system”:

“bottom fund” means a mutual fund to which this Instrument and National Instrument 81-101 apply and that is not a top fund;”;

(d) the deletion of the definition of “guaranteed mortgage” and the substitution of the following:

“guaranteed mortgage” means a mortgage fully and unconditionally guaranteed, or insured, by the government of Canada, by the government of a jurisdiction or by an agency of any of those governments or by a corporation approved by the Office of the Superintendent of Financial Institutions to offer its services to the public in Canada as an insurer of mortgages;”;

(e) the deletion of the definition of “mutual fund conflict of interest investment restrictions” and the substitution of 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 in which the mutual fund, alone or together with one or more related mutual funds, is a substantial securityholder, as defined by securities legislation,

- (b) 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 by securities legislation,
 - (c) prohibit a portfolio adviser 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 or an associate of a responsible person, as defined by 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, or
 - (d) prohibit the portfolio adviser from subscribing or buying securities on behalf of a mutual fund, where his own interest might distort his 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;”;
 - (f) the deletion of paragraph (e) of the definition of “permitted gold certificate” and the substitution of the following:
 - “(e) 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;”;
 - (g) the addition of the following definition, after the definition of “restricted security”:
 - “ “RSP clone fund” means a top fund that has adopted fundamental investment objectives to link its performance to the performance of a specified bottom fund whose securities constitute foreign property for registered plans by using specified derivatives to ensure that the securities of the top fund will not constitute foreign property under the ITA;”;
 - (h) the addition of the following as paragraph (e) of the definition of “short position”
 - “(e) a swap, obliges the mutual fund to deliver the underlying interest or pay cash;”;
 - (i) the addition of the following as paragraph (c) of the definition of “synthetic cash”
 - “(c) a long position in shares of an issuer and a short position in a standardized future of which the underlying interest is shares of that issuer, if the ratio between the value of the shares of that issuer and the position in the standardized future is such that, for any change in the value of one, a change of similar magnitude occurs in the value of the other.”;
 - (j) the addition of the following definition, after the definition of “timely disclosure requirements”:
 - “ “top fund” means a mutual fund to which this Instrument and National Instrument 81-101 apply and that has adopted fundamental investment objectives that include using all or some portion of its assets to purchase securities of, or enter into specified derivative transactions for which the underlying interest is based on securities of, one or more mutual funds, in accordance with section 2.5;”
- (3) Section 2.1 is amended by:
- (a) the deletion of subsection 2.1(2) and the substitution of the following:
 - “(2) Subsection (1) does not apply to a purchase of a government security, a security issued by a clearing corporation or the purchase by a top fund of a security issued by a bottom fund or a RSP clone fund.”;
 - (b) the deletion of subsection 2.1(6) and the substitution of the following:
 - “(6) An index mutual fund shall not rely on subsection (5) unless its simplified prospectus contains the disclosure referred to in subsection (5) of Item 6 and subsection (5) of Item 9 of Part B of Form 81-101F1 Contents of Simplified Prospectus.”; and
 - (c) the deletion of subsection 2.1(7).
- (4) Section 2.2 is amended by the addition of the following as subsection 2.2(1.1):

“(1.1) Subsection (1) does not apply to the purchase by a top fund of a security issued by a bottom fund or a RSP clone fund.”.

(5) Section 2.5 is amended by the deletion of section 2.5 and the substitution of the following:

“2.5 Investments in Other Mutual Funds

(1) A mutual fund shall not purchase, or enter into a specified derivative transaction for which the underlying interest is based on a security of another mutual fund unless

- (a) the mutual fund is a top fund,
- (b) the security is issued by a bottom fund or a RSP clone fund,
- (c) the bottom fund or the RSP clone fund is qualified for distribution under a simplified prospectus in the jurisdictions in which the securities of the top fund are qualified for distribution under a simplified prospectus,
- (d) there is no duplication of management fees, including incentive fees, between the top fund and the other mutual fund,
- (e) no sales charges are payable by the top fund in relation to its purchases of the securities of the other mutual fund,
- (f) no redemption fees or other charges payable by the top mutual fund in respect of the redemption by the top fund of the securities owned by the top fund in the other mutual fund,
- (g) no fees or charges of any sort are paid by the top fund, the other mutual fund, by their respective managers or principal distributors, or by any affiliate or associate of any of the foregoing entities, to anyone in connection with the top fund’s purchase, holding or redemption of the securities of the other mutual fund, and
- (h) mutual fund fees and expenses rebated by the other mutual fund or its manager are paid or granted to the top fund.

(2) Clauses (1)(b), (c) and (e) do not apply to the purchase of an index participation unit that is a security of a mutual fund.

(3) Clauses (1)(b) and (c) do not apply to the purchase of a security of another mutual fund if the other mutual fund was established with the approval of the government of a foreign jurisdiction and the only means by which the top fund may invest in the securities of issuers of that foreign jurisdiction is through a mutual fund so established.

(4) If the other mutual fund in which the top fund invests is managed by the manager or an affiliate of the manager of the top fund, the securities of the other mutual fund held by the top fund shall not be voted.

(5) The mutual fund conflict of interest investment restrictions and the mutual fund conflict of interest reporting requirements do not apply to a top fund which purchases securities of, or enters into specified derivative transactions for which the underlying interest is based on securities of, another mutual fund, if made in accordance with this section.”.

(6) Section 2.8 is amended by the deletion of paragraph 2.8(1)(f) and the substitution of the following:

“(f) enter into, or maintain, a swap position unless

- (i) for the long position of the swap, the mutual fund holds cash cover in an amount that, together with any margin on account for the swap, and the market value of the long position of the swap, is not less than, on a daily mark-to-market basis, the underlying market exposure of the swap; and
- (ii) for the short position of the swap, the mutual fund holds
 - (A) an equivalent quantity of the underlying interest of the short position of the swap,

- (B) a right or obligation to acquire an equivalent quantity of the underlying interest of the short position of the swap and cash cover that, together with any margin on account for the position and the market value of the position, is not less than the aggregate amount of the obligations of the mutual fund under the short position of the swap, or
 - (C) a combination of the positions referred to in clauses (A) and (B) that is sufficient, without recourse to other assets of the mutual fund, to enable the mutual fund to satisfy its obligations under the short position of the swap.”
- (7) Section 2.17 is amended by the addition of the following as subsection 2.17(3):
 - “(3) Paragraph (1)(b) does not apply if each simplified prospectus of the mutual fund since its inception contains the disclosure referred to in paragraph (1)(a).”
- (8) Section 5.1 is amended by the deletion of paragraph (a) and the substitution of the following:
 - “(a) either
 - (i) the basis of the calculation of a fee or expense that is charged to the mutual fund or directly to its securityholders in connection with the holding of securities of the mutual fund is changed in a way that could result in an increase in charges to the mutual fund or to its securityholders, or
 - (ii) a new fee or expense, to be charged to the mutual fund or directly to its securityholders in connection with the holding of securities of the mutual fund, is introduced;”
- (9) Section 5.8 is amended by addition of subsections 5.8(1.1), 5.8(1.2) and 5.8(1.3):
 - “(1.1) For the purposes of subsection (1), upon the occurrence of an offer to acquire, directly or indirectly, the shares of the manager of a mutual fund, the person or company making the offer may, upon payment of a reasonable fee and upon delivery of the affidavit referred to in subsection (1.2), require the manager of the mutual fund or its agent to furnish within ten days from receipt of the affidavit, a list made up to a date not more than ten days before the date of receipt of the affidavit setting out the names and addresses of the securityholders of the mutual fund as shown on the records of the mutual fund.
 - (1.2) The affidavit required under subsection (1.1) shall state:
 - (i) the name and address of the person or company making the offer;
 - (ii) the address for service of the person or company, if it is different from the address referred to in clause (i); and
 - (iii) that the list and any subsequent changes to it will not be used except as permitted under subsection (1.1).
 - (1.3) The person or company making an offer to acquire, directly or indirectly, the shares of the manager of a mutual fund may also require the manager of a mutual fund or its agent, upon payment of a reasonable fee, to furnish any changes to the list referred to in subsection (1.1) occurring on each business day following the date the list is made up to.”
- (10) Section 6.2 is amended by the deletion of paragraph 1 and the substitution of the following:
 - “1. A bank listed in Schedule I, II or III of the *Bank Act* (Canada).”
- (11) Section 9.1 is amended by :
 - (a) the deletion of subsections 9.1(1) and 9.1(2) and the substitution of the following:
 - “(1) Each purchase order for securities of a mutual fund received by a participating dealer at a location that is not its principal office shall, on the day the order is received, be sent by same day or next day courier, same day or next day priority post, telephone or electronic means, without charge to the person or company placing the order or to the mutual fund, to the principal office of the participating dealer or a person or company providing services to the participating dealer.

- (2) Each purchase order for securities of a mutual fund received by a participating dealer at its principal office or a person or company providing services to the participating dealer or by the principal distributor of the mutual fund at a location that is not an order receipt office of the mutual fund shall, on the day the order is received, be sent by same day or next day courier, same day or next day priority post, telephone or electronic means, without charge to the person or company placing the order or to the mutual fund, to an order receipt office of the mutual fund.”; and
- (b) the deletion of subsection 9.1(4) and the substitution of the following:
 - “(4) A participating dealer or principal distributor or a person or company providing services to the participating dealer or principal distributor that sends purchase orders electronically may
 - (a) specify a time on a business day by which a purchase order must be received in order that it be sent electronically on that business day; and
 - (b) despite subsections (1) and (2), send electronically on the next business day a purchase order received after the time so specified.”.
- (12) Section 9.4 is amended by the deletion of subsection (1) and the substitution of the following:
 - “(1) A principal distributor or participating dealer or a person or company providing services to the principal distributor or participating dealer shall forward any cash received for payment of the issue price of securities of a mutual fund to an order receipt office of the mutual fund so that the cash arrives at the order receipt office as soon as practicable and in any event no later than the third business day after the pricing date.”.
- (13) Section 10.2 is amended by :
 - (a) the deletion of subsections 10.2(1) and 10.2(2) and the substitution of the following:
 - “(1) Each redemption order for securities of a mutual fund received by a participating dealer at a location that is not its principal office shall, on the day the order is received, be sent by same day or next day courier, same day or next day priority post, telephone or electronic means, without charge to the relevant securityholder or to the mutual fund, to the principal office of the participating dealer or a person or company providing services to the participating dealer.
 - (2) Each redemption order for securities of a mutual fund received by a participating dealer at its principal office, by the principal distributor of the mutual fund at a location that is not an order receipt office of the mutual fund or a person or company providing services to the participating dealer or principal distributor shall, on the day the order is received, be sent by same day or next day courier, same day or next day priority post, telephone or electronic means, without charge to the relevant securityholder or to the mutual fund, to an order receipt office of the mutual fund.”; and
 - (b) the deletion of subsection 10.2(4) and the substitution of the following:
 - “(4) A participating dealer or principal distributor or a person or company providing services to the participating dealer or principal distributor that sends redemption orders electronically may
 - (a) specify a time on a business day by which a redemption order must be received in order that it be sent electronically on that business day; and
 - (b) despite subsections (1) and (2), send electronically on the next business day a redemption order received after the time so specified.”.
- (14) Section 11.3 is amended by the deletion of section 11.3 and the substitution of the following:
 - “**11.3 Trust Accounts** – A principal distributor or participating dealer, or a person or company providing services to the principal distributor or participating dealer, that deposits cash into a trust account in accordance with section 11.1 or 11.2 shall
 - (a) advise, in writing, the financial institution with which the account is opened at the time of the opening of the account and annually thereafter, that
 - (i) the account is established for the purpose of holding client funds in trust,

- (ii) the account is to be labelled by the financial institution as a “trust account”,
 - (iii) the account is not to be accessed by any person other than authorized representatives of the principal distributor or participating dealer or of a person or company providing services to the principal distributor or participating dealer, and
 - (iv) the cash in the trust account may not be used to cover shortfalls in any accounts of the principal distributor or participating dealer; or of a person or company providing services to the principal distributor or participating dealer,
- (b) ensure that the trust account bears interest at rates equivalent to comparable accounts of the financial institution; and
 - (c) ensure that any charges against the trust account are not paid or reimbursed out of the trust account.”
- (15) Section 11.4 is amended by the deletion of subsection (1) and the substitution of the following:
- “(1) Sections 11.1 and 11.2 do not apply to members of The Investment Dealers Association of Canada.”.
- (16) Section 12.1 is amended by the deletion of subsection (4) and the substitution of the following:
- “(4) Subsection (3) does not apply to members of The Investment Dealers Association of Canada.”.
- (17) Section 13.1 is amended by the addition of the following as subsection 13.1(1.1):
- “(1.1) A top fund must have dates for the calculation of net asset value that are compatible with those of the other mutual fund.”.
- (18) Section 13.5 is amended by the deletion of paragraph 5 of section 13.5 and the substitution of the following:
- “5. Margin paid or deposited on swaps, forward contracts, or standardized futures
- (a) shall be reflected as an account receivable; and
 - (b) if not in the form of cash, shall be noted as held for margin.”.
- (19) Section 17.1 is amended by the addition of the following as paragraph 17.1(1)(i):
- “(i) for swaps, the payment dates, the underlying interest, the principal or notional amount or quantity of the underlying interest, the applicable pricing details, and the value as determined under section 13.5.”.
- (20) Part 19 is amended by the addition of the following as subsection 19.3:
- “19.3. Revocation of exemptions**
- A mutual fund that has obtained an exemption or waiver from, or approval under, National Policy Statement No. 39 or this Instrument before **[effective date of this amending Instrument]**, that relates to a mutual fund investing in other mutual funds, may no longer rely on such an exemption, waiver or approval as of **[date that is one year after the effective date of this amending Instrument]**.”

PART 2 EFFECTIVE DATE

2.1 Effective Date

This Instrument comes into force on ●, 2002.

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

PART 1 AMENDMENTS

1.1 Amendments

- (1) Companion Policy 81-102CP is amended by this Amendment.
- (2) Section 6.3 is amended by the deletion of section 6.3 and the substitution of the following:

“6.3 Calculation of Fees - Subparagraph 5.1(a)(i) of the Instrument requires securityholder approval before the basis of the calculation of a fee or expense that is charged to a mutual fund or directly to its securityholders in connection with the holding of securities of the mutual fund is changed in a way that could result in an increase in charges to the mutual fund or to its securityholders. The Canadian securities regulatory authorities note that the phrase “basis of calculation” includes any increase in the rate at which a particular fee is charged to the mutual fund or to its securityholders.”
- (3) Section 16.2 is amended by the addition of the following as subsection (3):

“(3) The CSA are of the view that the new provisions of the Instrument relating to mutual funds investing in other mutual funds introduced on **[effective date of the amending Instrument]** are not “substantially similar” to those of the Instrument which they replace.”
- (4) Section 16.3 is amended by the addition of the following as subsection (2):

“(2) For greater certainty, note that the coming into force of National Instrument 81-102 did not trigger the “sunset” of those waivers and orders. The coming into force of section 19.3 of the Instrument, however, will effectively cause those waivers and orders to expire one year after its coming into force.”

PART 2 EFFECTIVE DATE

2.1 Effective Date

This Amendment comes into force on ●, 2002.