

ANNEX C

PROPOSED CHANGES TO COMPANION POLICY 81-105CP TO NATIONAL INSTRUMENT 81-105 *MUTUAL FUND SALES PRACTICES*

1. *Companion Policy 81-105CP to National Instrument 81-105 Mutual Fund Sales Practices is changed by this Document.*

2. *Part 4 of the Companion Policy is changed by adding the following sections:*

4.1.1 Payment of money – Except for payments specifically permitted under Parts 3 and 5 of the Instrument, section 2.1 of the Instrument prohibits members of the organization of a mutual fund from making payments of money to participating dealers or their representatives in connection with the distribution of securities of the mutual fund.

4.1.2 Means of payment – The Canadian securities regulatory authorities are of the view that the Instrument does not preclude members of the organization of a mutual fund from facilitating the payment by a mutual fund investor to a participating dealer of a sales commission in connection with the purchase of mutual fund securities that is negotiated and agreed to exclusively between those two parties. For example, the participating dealer may remit to the member the gross proceeds of an investor’s purchase of mutual fund securities from which the member may then deduct and remit the sales commission to the participating dealer on the investor’s behalf pursuant to instructions received from the dealer.

3. *Section 5.1 is changed by replacing* “Paragraphs 3.1(b) and 3.2(b) of the Instrument require the disclosure of the method of calculation used in determining the amount of sales commissions and” *with* “Paragraph 3.2(1)(b) of the Instrument requires the disclosure of the method of calculation used in determining the amount of”.

4. *Section 5.2 is changed by replacing* “Subparagraphs 3.1(c)(iii) and 3.2(1)(d)(iii) of the Instrument prevent” *with* “Subparagraph 3.2(1)(d)(iii) of the Instrument prevents”.

5. *Part 5 of the Companion Policy is changed by adding the following section:*

5.4 Restriction on payment and acceptance of trailing commissions where no suitability determination made – Subsection 3.2(4) prohibits members of the organization of a mutual fund from paying trailing commissions to participating dealers who do not make a suitability determination for a client in connection with securities of the mutual fund held in an account of the client. Correspondingly, subsection 2.2(2) of the Instrument permits participating dealers to solicit and accept only those payments that members are permitted to make under Parts 3 and 5. Consequently, participating dealers who are not subject to the obligation to make a suitability determination under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* or corresponding SRO rules may not solicit or accept trailing commission

payments from members of the organization of a mutual fund. Consistent with this restriction, participating dealers and members of the organization of a mutual fund should establish a process under which a participating dealer is required to confirm to the member that it has made a suitability determination for a client as a prerequisite to the receipt of trailing commission payments. In addition, members of the organization of a mutual fund should make available to participating dealers not making a suitability determination in respect of a client, a class or series of securities of a mutual fund that does not pay trailing commissions, which the dealer should offer to the client.

6. These changes become effective [*365 days from the date of final publication*].