

GENERAL ORDER 81-503

Temporary Exemption from Borrowing Limit to Accommodate Redemption Requests of Mutual Funds Investing in Fixed Income Securities

In the Matter of *The Securities Act, 1988*

ORDER

WHEREAS the Financial and Consumer Affairs Authority of Saskatchewan (**FCAA**) has assigned to the Director of the Securities Division, FCAA (**Director**) the power to make exemption orders under the provision of *The Securities Act, 1988* (**Act**) including orders of general application;

AND WHEREAS FCAA Securities Division staff (**Staff**) has applied to the Director for an Order pursuant to section 160 of the Act exempting certain mutual funds from the 5% limit on borrowing imposed by subparagraph 2.6(1)(a)(i) (**Borrowing Limit**) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) during the current outbreak of the Coronavirus Disease 2019 (**COVID-19**) as outlined below;

AND WHEREAS terms defined in the Act, National Instrument 14-101 *Definitions*, NI 81-102, National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**), National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**) and Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) have the same meaning in this Order;

AND WHEREAS for the purposes of this Order “**Affected Mutual Fund**” is a mutual fund that is subject to NI 81-102, other than a labour-sponsored venture capital corporation, and that invests in fixed income securities;

AND WHEREAS it has been represented to the Director that:

- (a) As a result of COVID-19, which was declared a pandemic by the World Health Organization on March 11, 2020 the Lieutenant Governor in Council of Saskatchewan has declared “State of Emergency” under *The Emergency Planning Act* on March 18, 2020;

- (b) Staff acknowledges that this pandemic may present challenges for market participants in the meeting of certain obligations under Saskatchewan securities laws;
- (c) Staff have identified certain challenges as follows:
 - (i) some investors may need to redeem securities and other investors may desire to continue to invest with Affected Mutual Funds, and
 - (ii) because of short-term dislocation in the fixed income securities market caused by the COVID-19 pandemic, providing Affected Mutual Funds with increased capacity to borrow on a temporary basis in excess of the Borrowing Limit may assist in investment fund management activities for Affected Mutual Funds continuing to be conducted in the best interests of Affected Mutual Funds while continuing to meet investor expectations for liquidity;
- (d) In light of COVID-19, to assist persons or companies with the meeting of their obligations under Saskatchewan securities law, certain temporary exemptions are necessary;
- (e) Staff understands that the securities regulatory authority or regulator in each of the other provinces of Canada intends to issue a rule, instrument or blanket order providing equivalent exemptions from the securities law of its respective jurisdiction except where an exemption or variation is not required in a jurisdiction;

AND WHEREAS the Director is of the opinion that it would not be prejudicial to the public interest to make this Order;

IT IS HEREBY ORDERED under section 160 of the Act that an Affected Mutual Fund is exempted from complying with the Borrowing Limit, provided that:

1. The outstanding amount of all borrowings made by the Affected Mutual Fund must not exceed 10% of its net asset value at the time of a borrowing during the period from April 17, 2020 to July 31, 2020;
2. Any Affected Mutual Fund relying on this Order must use the exemption from the Borrowing Limit only for the purpose of facilitating an orderly liquidation of fixed income securities to deal with the short-term dislocation in the fixed income securities market due to the COVID-19 pandemic, in order to accommodate requests for the redemption of securities of the Affected Mutual Fund received during the period from April 17, 2020 to July 30, 2020;

3. If the outstanding amount of all borrowings made by an Affected Mutual Fund relying on this Order exceeds 15% of its net asset value at any time after the time of borrowing, then the Affected Mutual Fund must, as quickly as is commercially reasonable, take all necessary steps to reduce the outstanding amount of all borrowings of the Affected Mutual Fund to 10% or less of its net asset value;
4. If the outstanding amount of all borrowings made by an Affected Mutual Fund relying on this Order exceeds 15% of its net asset value for any five consecutive business days after the date it first relies on this Order, then the Affected Mutual Fund must, as soon as reasonably practicable, notify the Ontario Securities Commission (OSC) Director of the Investment Funds and Structured Products Branch by email at IFSPDirector@osc.gov.on.ca;
5. The investment fund manager of an Affected Mutual Fund relying on this Order must have written liquidity risk management policies and procedures that address the Affected Mutual Fund's key liquidity risks, including a description of how the risks are identified, monitored and measured, and the techniques used to manage and mitigate the risks;
6. The investment fund manager of an Affected Mutual Fund relying on this Order must have written policies and procedures for using the exemption from the Borrowing Limit that require the Affected Mutual Fund to do all of the following:
 - (a) prior to each borrowing above the Borrowing Limit, consider the use of other measures instead of, or in addition to, reliance on this Order, including other liquidity risk management tools and/or the suspension or limitation of redemptions;
 - (b) prior to each borrowing above the Borrowing Limit, consider the investment objectives, investment strategies, asset mix and holdings of the Affected Mutual Fund, including the amount of fixed income holdings;
 - (c) prior to each borrowing above the Borrowing Limit, consider the costs and risks of borrowing to the Affected Mutual Fund relative to the interests of the remaining securityholders and the redeeming securityholders of the Affected Mutual Fund;
 - (d) implement controls on decision-making on borrowing above the Borrowing Limit and monitoring of such decision-making;
 - (e) monitor levels of redemptions and the cash balance of the Affected Mutual Fund, in a manner that enables the Affected Mutual Fund to determine whether it is appropriate to borrow above the Borrowing Limit;

- (f) report to the independent review committee of the Affected Mutual Fund on the levels of borrowing above the Borrowing Limit, including the rationale for such borrowings, on a frequency agreed to by the independent review committee;
7. Before each time an Affected Mutual Fund relies on this Order, its investment fund manager must determine that it would be in the best interests of the Affected Mutual Fund to use the exemption from the Borrowing Limit, considering the policies and procedures set out in paragraph 6 of this Order;
8. Before an Affected Mutual Fund first relies on this Order, the investment fund manager of an Affected Mutual Fund relying on this Order must obtain the approval of the independent review committee of the Affected Mutual Fund under subsection 5.2(2) of NI 81-107 for the use of the exemption from the Borrowing Limit, as if subsection 5.2(2) of NI 81-107 applies;
9. Any Affected Mutual Fund relying on this Order must disclose how the exemption from the Borrowing Limit was used, and the reason why it was necessary to use it, in each management report of fund performance required to be filed after the use of the exemption from the Borrowing Limit;
10. The investment fund manager of an Affected Mutual Fund relying on this Order must keep a record of each instance where the exemption from the Borrowing Limit was used, including the amount borrowed, the terms and conditions of the loan (including the lender, the interest rate and the term), the borrowing and repayment dates, and the reason why the investment fund manager determined it was necessary for the Affected Mutual Fund to use the exemption from the Borrowing Limit. Upon request, the record must be provided to the OSC Director of the Investment Funds and Structured Products Branch by email at IFSPDirector@osc.gov.on.ca;
11. Any Affected Mutual Fund relying on this Order must, as soon as reasonably practicable and prior to relying on this Order for the first time, notify the OSC Director of the Investment Funds and Structured Products Branch by email at IFSPDirector@osc.gov.on.ca stating that the Affected Mutual Fund intends to rely on this Order;
12. Any Affected Mutual Fund relying on this Order must, as soon as reasonably practicable and prior to relying on this Order for the first time, post a statement on its public website, or the public website of its investment fund manager, stating that the Affected Mutual Fund intends to rely on this Order;

13. Any Affected Mutual Fund relying on this Order with an outstanding amount of all borrowings exceeding 5% of its net asset value as of August 14, 2020 must, as soon as reasonably practicable, notify the OSC Director of the Investment Funds and Structured Products Branch by email at IFSPDirector@osc.gov.on.ca;
14. Reference made in a notice pursuant to paragraphs 4, 11 or 13 of this Order, or in a public website statement pursuant to paragraph 12 of this Order, to an equivalent exemption granted by a securities regulatory authority or regulator in another jurisdiction of Canada that is the Affected Mutual Fund's principal regulator, as defined in MI 11-102, will be deemed to constitute a reference to the relevant exemption in this Order;

IT IS HEREBY FURTHER ORDERED that this Order comes into effect on April 17, 2020 and expires on July 31, 2020.

Dated April 16, 2020.

“Dean Murrison”

Dean Murrison
Director, Securities Division
Financial and Consumer Affairs
Authority of Saskatchewan