

Multilateral CSA Notice

Repeal of National Instrument 81-104 *Alternative Mutual Funds*

August 31, 2023

Introduction

The Canadian Securities Administrators (CSA), except the Autorité des marchés financiers (AMF), (the **Participating Jurisdictions** or **we**) are repealing National Instrument 81-104 *Alternative Mutual Funds* (**NI 81-104**) in its entirety (the **Repeal**).

As a result of prior policy work aimed at modernizing investment fund regulation, most operational aspects of NI 81-104 have been migrated to National Instrument 81-102 *Investment Funds* (**NI 81-102**). Part 4 of NI 81-104, which is focused on proficiency requirements (the **Proficiency Requirements**) for mutual fund restricted individuals (**MFRIs**) for the distribution of alternative mutual funds (as defined in NI 81-102), is the only remaining element.

CSA members issued harmonized blanket orders (the **Blanket Orders**) to provide additional proficiency course options as the course options prescribed by the Proficiency Requirements pre-date the introduction of the alternative mutual funds regime and do not address the specific differences between conventional mutual funds and alternative mutual funds. The Blanket Orders have been codified by Policy No. 11 *Proficiency Standards for the Sale of Alternative Mutual Funds* (**Policy No. 11**) of the Mutual Fund Dealers Association of Canada (**MFDA**). As of January 1, 2023, Policy No. 11 is known as Interim Mutual Fund Dealer Rule 1000 *Proficiency Standards for the Sale of Alternative Mutual Funds* (**Rule 1000**) of the Canadian Investment Regulatory Organization (**CIRO**).¹ Given the overlap between Rule 1000 and the Proficiency Requirements set out in Part 4 of NI 81-104, we have determined that NI 81-104 is no longer necessary.

The AMF is not proposing to repeal NI 81-104 and will continue to rely on its local blanket order (**AMF Blanket Order**).² It is appropriate for the Proficiency Requirements to remain applicable in Québec as CIRO has issued a decision exempting all mutual fund dealers registered in Québec as of January 1, 2023 from the application of its rules for their activities in Québec, except for its

¹ As of January 1, 2023, CIRO is the national self-regulatory organization that oversees all investment dealers, mutual fund dealers and trading activity on Canada's debt and equity marketplaces. CIRO is carrying on the regulatory functions of the Investment Industry Regulatory Organization of Canada and the MFDA.

² Décision n° 2021-PDG-0003 Décision générale relative à des dispenses de certaines obligations prévues au Règlement 81-104 sur les organismes de placement collectif alternatifs issued on January 27, 2021. Available (in French only) at <https://lautorite.qc.ca/fileadmin/lautorite/reglementation/valeurs-mobilières/81-104/2021-01-28/2021-PDG-0003-decision-generale-opc-alternatif-fr.pdf>.

operating rules, during the transition phase of the AMF's transition plan for Québec mutual fund dealer membership in CIRO.³ The AMF will consider repealing NI 81-104 and revoking the AMF Blanket Order following the start of the permanent phase of the AMF's transition plan for Québec mutual fund dealer membership, as it is anticipated that mutual fund dealers registered in Québec will be subject to equivalent requirements provided by CIRO rules at that time.

The British Columbia Securities Commission (**BCSC**) anticipates that the Repeal will be effected through an Order in Council of the government of British Columbia (**BC**), and would be effective at the same time as the Repeal in the other CSA jurisdictions, except Québec as discussed above.

In some jurisdictions, ministerial approvals are required for the implementation of the Repeal. Provided all ministerial approvals are obtained, the Repeal will come into force on January 29, 2024.

Except in BC, the text of the Repeal is contained in Annex B of this Notice and will also be available on the websites of the following Participating Jurisdictions:

www.asc.ca
www.fcaa.gov.sk.ca
www.mbsecurities.ca
www.osc.ca
www.fcnb.ca
nssc.novascotia.ca

In BC, because the Repeal is anticipated to be made through an Order in Council, the BCSC would publish any Order in Council at the time it becomes effective.

Substance and Purpose

The Proficiency Requirements apply to MFRI's who trade in securities of alternative mutual funds. However, very few of the existing MFRI's meet the Proficiency Requirements and the existing course options contain little material on alternative mutual funds. The Blanket Orders offer a temporary exemption from the Proficiency Requirements by providing additional course options to satisfy the Proficiency Requirement for trades in alternative mutual fund securities. However, as the Blanket Orders have been codified by Rule 1000, NI 81-104 is no longer necessary in the Participating Jurisdictions.

The Repeal of the Proficiency Requirements will allow MFRI's to continue to be able to rely on the appropriate course options to meet the proficiency requirements to distribute alternative mutual fund securities pursuant to Rule 1000. As the Proficiency Requirements created a

³ AMF Notice of publication - Regulation to amend Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations – Amendments relating to the transition for Québec mutual fund dealers to the new SRO, November 24, 2022 available at <https://lautorite.qc.ca/fileadmin/lautorite/reglementation/valeurs-mobilieres/31-103/2022-11-24/2022nov24-31-103-avis-publication-nouvel-oar-en.pdf>.

regulatory burden for MFRIs and limited retail investor access to alternative investment strategies, the Repeal will also result in regulatory burden reduction.

The purpose of the Repeal, together with Rule 1000, is to modernize the Proficiency Requirements by providing robust dealer proficiency standards applicable to MFRIs who distribute alternative mutual funds. Providing MFRIs with additional proficiency course options that offer updated and relevant information on alternative mutual funds helps facilitate access to alternative investment strategies for retail investors, while also maintaining investor protection. As a result, retail investors may be able to benefit from additional portfolio diversification opportunities through better access to alternative investment strategies.

Background

The Repeal is the final step of the CSA's Modernization of Investment Fund Product Regulation Project (the **Modernization Project**) relating to the establishment of a regulatory framework for alternative mutual funds.

The mandate of the Modernization Project has been to review the parameters of product regulation that apply to publicly offered investment funds (both mutual funds and non-redeemable investment funds) and to consider whether our current regulatory approach sufficiently addresses product and market developments in the Canadian investment fund industry, and whether it continues to adequately protect investors.

Introduction of Alternative Mutual Funds

On March 27, 2013, the CSA first published a Notice and Request for Comment, which outlined a proposed regulatory framework for alternative mutual funds (the **Proposed Alternative Funds Framework**), including, a series of questions that focused on the broad parameters for such a regulatory framework (the **Framework Consultation Questions**).

On June 25, 2013, CSA Staff Notice 11-324 *Extension of Comment Period* was published to advise that the CSA had decided to consider the Proposed Alternative Funds Framework at a later date, in conjunction with certain investment restrictions for non-redeemable investment funds that we considered to be interrelated with the Proposed Alternative Funds Framework.

On February 12, 2015, CSA Staff Notice 81-326 *Update on an Alternative Funds Framework for Investment Funds* was published to summarize some of the feedback we received in connection with the Framework Consultation Questions.

On September 22, 2016, the CSA published proposed amendments (the **Proposed Amendments**) to codify a number of the parameters and proposals set out in the Proposed Alternative Funds Framework, as well as commentary we received in connection with those proposals. The Proposed Amendments contemplated the repeal of NI 81-104.

On October 4, 2018, the CSA published final amendments (**Alternative Mutual Fund Amendments**) to NI 81-102 that introduced a new category of mutual funds known as “alternative mutual funds” which invest in physical commodities or specified derivatives, and

borrow or engage in short selling, in a manner not otherwise permitted for conventional mutual funds under NI 81-102. The Alternative Mutual Fund Amendments moved most of the regulatory framework applicable to commodity pools out of NI 81-104 and into NI 81-102 and renamed these funds as “alternative mutual funds”. These amendments aimed to provide retail investors with greater access to alternative investment strategies, while maintaining appropriate protections.

The CSA retained the Proficiency Requirements, with the acknowledgement that alternative mutual funds can be more complex than other types of mutual funds and that additional proficiency may be needed for mutual funds dealers selling these products. The Proficiency Requirements are the only remaining part in NI 81-104 and the CSA indicated that once the Proficiency Requirements were replaced, the CSA intended to repeal NI 81-104.

CSA Blanket Orders

On January 28, 2021, the CSA issued the Blanket Orders to provide additional proficiency course options to address two issues.⁴ First, to better align proficiency requirements with information on alternative mutual funds, and second, to ensure MFRIIs seeking to distribute alternative mutual fund securities have the education, training and experience that is necessary to understand the structure, features and risks of any alternative mutual fund that they may wish to recommend to a client, to support investor protection.

Policy No.11 (now, Rule 1000)

On November 25, 2021, the MFDA published for comment Policy No. 11 to establish proficiency requirements for the distribution of alternative mutual funds by MFDA Members and Approved Persons. The accompanying MFDA notice indicated that the CSA intended to repeal NI 81-104 when more appropriate proficiency requirements for the distribution of alternative mutual funds are put in place.

Policy No. 11 (now, Rule 1000 of CIRO), which took effect on July 21, 2022, adopted proficiency requirements that are consistent with the Blanket Orders. Policy No. 11 differs from the Blanket Orders in that the proficiency requirements for the distribution of alternative mutual funds sold pursuant to a prospectus are also extended to the distribution of alternative mutual funds sold on a prospectus-exempt basis.

Summary of Written Comments Received by the CSA on the Proposed Amendments

On October 4, 2018, the CSA published a summary of the comments and responses together with the Alternative Mutual Fund Amendments. Annex A provides a reproduction of the excerpts

⁴ In Ontario, the blanket relief was issued by Ontario Instrument 81-506 *Temporary Exemptions from National Instrument 81-104 Alternative Mutual Funds* (the **OSC Blanket Order**) with an expiry date of July 28, 2022. On February 24, 2022, the OSC published OSC Rule 81-507 *Extension to Ontario Instrument 81-506 Temporary Exemptions from National Instrument 81-104 Alternative Mutual Funds* to cause the relief provided in the OSC Blanket Order to be in force for an additional 18-month period from July 29, 2022 to January 29, 2024.

from the summary of comments and responses relating to “Part 4 - Proficiency and Supervisory Requirements” of NI 81-104.

Commenters expressed support for the proposal to repeal Part 4 of NI 81-104, while noting that the CSA should engage with the MFDA to review how the Proficiency Requirements may need to be reconsidered in respect of alternative mutual funds. In response to the comments, the CSA issued the Blanket Orders to provide additional proficiency course options for the distribution of alternative mutual funds and subsequently, the MFDA adopted Rule 1000, which codified the Blanket Orders.

Copies of the comment letters are posted on the website of the Ontario Securities Commission at www.osc.ca.

Adoption of the Repeal

The Blanket Orders provide MFRIs with additional proficiency options for distributing alternative mutual funds. Additional proficiency requirements support appropriate know your product and suitability assessments of alternative mutual funds by MFRIs for their clients. Rule 1000 codifies the Blanket Orders.

Part 4 of NI 81-104 sets out the Proficiency Requirements, but as Part 4 of NI 81-104 is the only remaining part of NI 81-104, and the Proficiency Requirements are now replaced with Rule 1000, NI 81-104 is unnecessary. Therefore, the Participating Jurisdictions are repealing NI 81-104.

Effective Date

The Repeal will come into force on January 29, 2024.

Content of Annexes

The text of the Repeal is contained in Annex B to this Notice and is available on the websites of members of the Participating Jurisdictions.

Annex A: Excerpts from the Summary of Comments and Responses on the CSA Notice and Request for Comment, Modernization of Investment Fund Product Regulation – Alternative Funds re Part 4 of NI 81-104 *Alternative Mutual Funds*

Annex B: Repeal of National Instrument 81-104 *Alternative Mutual Funds*

Annex C: Local Matters

Questions

Please refer your questions to any of the following:

British Columbia Securities Commission

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British Columbia Securities Commission
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Alberta Securities Commission

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ANNEX A

EXCERPTS FROM THE

SUMMARY OF COMMENTS AND RESPONSES ON THE

CSA NOTICE AND REQUEST FOR COMMENT

MODERNIZATION OF INVESTMENT FUND PRODUCT REGULATION –

ALTERNATIVE FUNDS

RE: PART 4 OF NI 81-104 *ALTERNATIVE MUTUAL FUNDS*

On October 4, 2018, the CSA published final amendments to National Instrument 81-102 *Investment Funds* (NI 81-102) that introduced a new category of mutual funds known as “alternative mutual funds”. The following is a reproduction of the excerpts from the summary of comments and responses relating to “Part 4 - Proficiency and Supervisory Requirements” of National Instrument 81-104 *Alternative Mutual Funds*.

Table of Contents	
Part	Title
Part I	Background
Part II	Part 4 – Proficiency and Supervisory Requirements
Part III	List of Commenters
Part I - Background	
<p>On September 22, 2016, the Canadian Securities Administrators (CSA) published for comment proposals to repeal National Instrument 81-104 <i>Commodity Pools</i>, (NI 81-104) and to amend NI 81-102, National Instrument 41-101 <i>General Prospectus Requirements</i>, National Instrument 81-101 <i>Mutual Fund Prospectus Disclosure</i>, National Instrument 81-106 <i>Investment Fund Continuous Disclosure</i>, and National Instrument 81-107 <i>Independent Review Committee for Investment Funds</i> (the Proposed Amendments). The Proposed Amendments represent the final phase of the CSA’s ongoing policy work to modernize investment fund product regulation and are aimed at developing a more comprehensive regulatory framework for mutual funds that seek to make use of more “alternative” investment strategies (alternative mutual funds). We received submissions from 41 commenters in respect of the Proposed Amendments. The name of each commenter is listed in Part III of this Summary of Comments. We wish to thank all of those who took the time to comment.</p>	

Part II – Part 4 – Proficiency and Supervisory Requirements

Comments	Responses
<p>There was support for our proposal to repeal the proficiency requirements for mutual fund dealers dealing in commodity pools from Part 4 of NI 81-104, and to engage with the Mutual Fund Dealers Association (MFDA) regarding reviewing how existing proficiency requirements may need to be reconsidered in respect alternative funds.</p>	<p>We have reconsidered our initial proposal on mutual fund dealer proficiency for alternative mutual funds and decided to retain those provisions within NI 81-104. We recognize that any consideration of revisions to these proficiency standards should be conducted as part of a larger review of overall dealer proficiency requirements which would be beyond the scope of this Project.</p>
<p>A number of these commenters added that they do not believe that the Proposed Amendments for alternative funds represent a significant departure from conventional mutual funds in terms of complexity, in that many of the same strategies can be employed by both types of products -- the difference relates primarily to the extent these strategies can be used. They recommend we take a principles based approach to any additional proficiency requirements, consistent with general registrant proficiency requirements in National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> (NI 31-103).</p>	<p>Please see our response above.</p>
<p>A different commenter suggested the proficiency for selling alternative funds should be the same as for selling hedge funds as they are equally complex.</p>	<p>Please see our response above.</p>
<p>One commenter expressed concern that any proposed changes in proficiency requirements not create increased confusion or burden for investors, noting that in some cases, an investor may have to deal with multiple dealers in the same firm with respect to different investment funds in their account with that firm.</p>	<p>Please see our response above.</p>

Part II – Part 4 – Proficiency and Supervisory Requirements

Comments	Responses
<p>Others agreed that proficiency is best dealt with through the MFDA. These commenters added that the current proficiency requirements under NI 81-104 have been a significant impediment to distribution by mutual fund dealers and that establishing unnecessarily strict proficiency requirements again would result in the same issue.</p>	<p>Please see our response above.</p>
<p>One commenter recommended specific proficiency requirements for trading in alternative funds. It added that if the CSA decides to raise the base level for mutual fund dealers then it should recommend a refresher course for all existing dealers as well to level the playing field. This commenter suggests that any additional proficiency courses and content be validated in collaboration with the MFDA, the CSA and any applicable proficiency course providers to ensure consistency and has offered to participate in that process.</p>	<p>Please see our response above. We welcome any input in this area.</p>
<p>Two commenters expressed concern that similar issues that have arisen in the past with the mis-selling of certain products by dealers due to inadequate training can occur again with alternative funds. They believe specific training is required for dealing representatives with evidence of successful completion of the training being retained in personnel records. These commenters added that deficiencies in the "know your client" process could be harmful for investors investing in alternative funds. They also believe that the current suitability standard is inadequate and that a fiduciary or "best interest" standard should be applied to dealers. They added that they do not expect these</p>	<p>The concerns are noted. Please see our response above regarding the mutual fund dealer proficiency standards for alternative mutual funds.</p> <p>As the commenter notes, the CSA is currently working on initiatives that are intended to address some of these concerns and issues.</p>

Part II – Part 4 – Proficiency and Supervisory Requirements	
Comments	Responses
<p>products to be sold on a "DSC" basis. They also took note of the concurrent work the CSA is engaged in regarding the relationship between dealers and clients, notably under <i>CSA Consultation Paper 33-404</i> which may address some of these concerns.</p>	
Part III – List of Commenters	
<p>AGF Investments Inc. Alternative Investment Management Association (AIMA) Arrow Capital Management Inc. AUM Law Professional Corporation Aviva Investors Canada Inc. BlackRock Asset Management Canada Limited BMO Capital Markets and BMO Global Asset Management Borden Ladner Gervais LLP Brompton Funds Limited Canadian Advocacy Council for Canadian CFA Institute Societies The Canadian Foundation for Advancement of Investor Rights (FAIR) Canadian Imperial Bank of Commerce Canadian Securities Institute, The (CSI) East Coast Fund Management Inc. First Asset Investment Management Inc. Jeffrey L. Glass and Darrin R. Renton Hedge Fund Standards Board Invesco Canada Ltd. The Investment Funds Institute of Canada (IFIC) Investors Group Inc. Irwin, White & Jennings (on behalf of Growthworks Capital Ltd.) Kenmar Associates Lawrence Park Asset Management Ltd. Lightwater Partners Ltd. Lysander Funds Limited Mackenzie Financial Corporations Manulife Asset Management Limited McCarthy Tétrault LLP McMillan LLP Morgan Meighen & Associates Limited Picton Mahoney Asset Managements Portfolio Management Association of Canada (PMAC)</p>	

RBC Capital Markets
RBC Global Asset Management Inc.
RP Investment Advisors
Stikeman Elliott LLP (Financial Products and Services Group)
Sun Life Global Investments (Canada) Inc.
TD Securities Inc.
Tim McElvaine
Vision Capital Corporation
Wildeboer Dellece LLP

ANNEX B

**REPEAL OF
NATIONAL INSTRUMENT 81-104 *ALTERNATIVE MUTUAL FUNDS***

- 1. *National Instrument 81-104 Alternative Mutual Funds is repealed by this Instrument.***
2. (a) This Instrument comes into force on January 29, 2024.
- (b) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after January 29, 2024, this Instrument come into force on the day on which it is filed with the Registrar of Regulations.

ANNEX C

Local Matters

In Saskatchewan the proposed amendments are being made under the following provisions of the Act:

Paragraph 154(1) c (i) of the Act authorizes the Authority to make rules prescribing the standards of practice and business conduct of registrants in dealing with their customers and clients and prospective customers and clients.

Paragraph 154(1)f of the Act authorizes the Authority to make rules prescribing requirements in respect of the disclosure or furnishing of information to customers and clients, prospective customers and clients, other registrants, the public or the Authority by registrants and directors, partners, officers, representatives, employees and security holders of registrants

Paragraph 154 1 (ff.5) of the Act authorizes the Authority to make rules providing for exemptions from Saskatchewan securities laws pursuant to section 147.41.

Paragraph 154 1 (u.5) of the Act authorizes the Authority to make rules prescribing information, documents, records or other materials that are required to be filed or delivered, including requirements relating to the method by which they are to be filed or delivered, the timing of the filing or delivery, the costs related to the filing or delivery, when they are deemed to have been filed, delivered or received;

Paragraph 154 1 v of the Act authorizes the Authority to make rules governing investment funds and the advertising, distribution and trading of the securities of investment funds and, without limiting the generality of the foregoing:

- designating issuers or a class or classes of issuers as investment funds or as non-redeemable investment funds;
- respecting sales charges imposed by a distribution company or contractual plan service company under a contractual plan on purchasers of shares or units of an investment fund;
- prescribing a penalty for the early redemption of shares or units of an investment fund;
- prescribing the form and contents of reports to be filed by the management company or distributors of an investment fund;
- respecting the custodianship of assets of any investment fund, the minimum capital requirements for any investment fund making a distribution and prohibiting or

restricting the reimbursement of costs associated with the organization of an investment fund;

- any matters affecting any investment fund that require the approval of security holders of the fund, the Authority or the Director;
- the contents and use of sales literature, sales communications and advertising relating to any investment fund or securities of any investment fund;

Paragraph 154 1(vi) of the Act authorizes the Authority to make rules permitting or restricting investment policies and practices in connection with any investment fund;

Paragraph 154 1(vii) of the Act authorizes the Authority to make rules prescribing the requirements with respect to, or in relation to, promoters, advisers or persons and companies that administer or participate in the administration of the affairs of investment funds;

Paragraph 154 1(viii) of the Act authorizes the Authority to make rules requiring investment funds to establish and maintain an independent committee for the purposes described in section 128.1 of the Act, prescribing its powers and duties and prescribing requirements relating to:

- (a) the mandate and functioning of the independent committee;
- (b) the composition of the independent committee and qualifications for membership on the independent committee, including the matters respecting the independence of members and the process for selecting members;
- (c) the standard of care that applies to members of the independent committee when exercising their powers, performing their duties and carrying out their responsibilities;
- (d) the disclosure of information to security holders of the investment fund, to the investment fund manager and to the Commission;
- (e) matters affecting the investment fund that require review by the independent committee or approval of the independent committee;