

# CANADIAN REGULATORS REMOVE KEY BARRIER TO DISTRIBUTION OF ALTERNATIVE MUTUAL FUNDS – NEW COURSES WILL PERMIT MUTUAL FUND DEALERS/REGISTERED FIRMS TO TRADE IN SECURITIES OF ALTERNATIVE MUTUAL FUNDS

Posted on January 29, 2021

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The thirteen member jurisdictions comprising the Canadian Securities Administrators (the “**CSA**”) issued a series of related blanket orders on January 28, 2021 (the “**Blanket Orders**”) providing additional courses for mutual fund restricted individuals (“**MFRIs**”) and their supervisors, enabling MFRIs to trade in the securities of alternative mutual funds with their clients. The new courses will remove a significant barrier that had largely prevented mutual fund dealers/MFRIs from participating in the distribution of alternative mutual fund securities and will greatly improve access to these investment products for retail investors across Canada.

## **Background**

Retail offered alternative mutual funds officially became a reality on January 3, 2019 as part of a series of amendments to National Instrument 81-102 – *Investment Funds* (“**NI 81-102**”) and related National Instruments. Alternative mutual funds are mutual funds (other than precious metals funds) that have adopted fundamental investment objectives that permit them to invest in physical commodities or specified derivatives, to borrow cash or engage in short selling in a manner not permitted for traditional “long only” mutual funds offered under NI 81-102. As a result of the more flexible investment restrictions permitted under NI 81-102, alternative mutual funds can play an important role in balancing an investor’s portfolio.

However, at the time that the alternative mutual fund amendments to NI 81-102 were adopted, the proficiency requirements in National Instrument 81-104 – *Alternative Mutual Funds* (formerly known as *Commodity Pools*) (“**NI 81-104**”) for mutual fund dealers/MFRIs to qualify to distribute alternative mutual funds remained unchanged from the prior proficiency requirements for the distribution of commodity pools. Few, if any, mutual fund dealers had MFRIs and supervisors who met these proficiency requirements and the courses prescribed by NI 81-104 were not as relevant to alternative mutual funds. As a result, alternative mutual funds

have only been distributed to investors in Canada to date through registered securities dealers who are members of the Investment Industry Regulatory Organization of Canada (“**IIROC**”), preventing many Canadians who only deal through a mutual fund dealer from access to the benefits of portfolio diversification, risk reduction and non-correlated returns that are typically available via alternative mutual fund strategies.

The Blanket Orders are being issued as a part of the regulatory burden reduction initiative undertaken by many CSA jurisdictions and are an important step towards improving market access for Canadian retail investors.

### ***Existing NI 81-104 Proficiency Requirements***

Until now, in order to sell alternative mutual funds, both the MFRI and their supervisor at a mutual fund dealer/registered firm had to meet at least one of the following proficiency requirements<sup>[1]</sup>:

- a. a passing grade for the Canadian Securities Course;
- b. a passing grade for the Derivatives Fundamentals Course;
- c. successfully completed the Chartered Financial Analyst Program; or
- d. obtained any applicable proficiency standard mandated by a self-regulatory authority.

(the qualifications referred to in (a) to (c) above being referred to as the “**Existing NI 81-104 Courses**”)

The proficiency requirements in NI 81-104 remained unchanged from those previously required in connection with the sale of securities of commodity pools by mutual fund dealers/registered firms and did not necessarily provide all of the information which would be required for MFRI and their supervisors to adequately understand the wide variety of investment strategies that may be followed by alternative mutual funds and the function they can perform within an investor’s portfolio (commodity pools being only one type of alternative mutual fund).

### ***Alternate Proficiency Requirements Prescribe by the Blanket Orders***

To address concerns about the onerous proficiency requirements in NI 81-104, the CSA jurisdictions have issued the Blanket Orders which provide a temporary exemption to MFRI and their supervisors from the existing proficiency requirements in NI 81-104 for trades in the securities alternative mutual funds from the period from January 28, 2021 to July 28, 2022 (the “**Effective Period**”). In order to rely on the exemptions, both a MFRI and their supervisor must successfully complete either the Existing NI 81-104 Courses or any one of the following courses offered by the Canadian Securities Institute (“**CSI**”) or the Investment Funds Institute of Canada (via its educational arm known as “**IFSE**”):

<b>List of New Qualifying Courses under Blanket Orders</b>
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| <ol style="list-style-type: none"><li>1. CSI – Alternative Strategies: Hedge Funds and Liquid Alternatives for Mutual Funds Representatives Course, or</li><li>2. IFSE – Alternative Mutual Funds and Hedge Funds (collectively referred to as the “<b>Bridge Courses</b>”) or</li><li>3. CSI – Canadian Mutual Funds or IFSE – Canadian Investment Funds Course (collectively, the “<b>Updated Mutual Fund Courses</b>”), provided that the passing grade was received based upon course materials and an examination that substantially contains the content of the Bridge Courses</li></ol> |
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(The Bridge Courses, the Updated Mutual Funds Courses are collectively referred to as the “**Alternative Mutual Fund Courses**”).

### **Conditions For Reliance on Exemption Provided in Blanket Orders**

In order to rely on the exemption provided in the Blanket Orders, the mutual fund dealer/registered firm must satisfy the following three conditions:

1. The MFRI and their supervisor has passed **one** of the Alternative Mutual Funds Courses;
2. Any MFRI that trades in alternative mutual fund products in reliance on the Blanket Orders must only trade in alternative mutual fund products that are approved for sale by their mutual fund dealer/registered firm; and
3. The mutual fund dealer/registered firm of any MFRI that intends to rely on the exemption provided in the Blanket Orders must, prior to relying on a Blanket Order for the first time, notify the Director of the relevant branch of the provincial/territorial securities regulatory authority by email stating that the mutual fund dealer/registered firm intends to rely on the Blanket Order in that jurisdiction.

In Ontario, the [Blanket Order Ontario Instrument 81-506](#) will expire (if extended one time) after a period of 36 months. The Ontario Securities Commission intends to work on codifying the changes during this period.

### **Expected Impact of Blanket Orders**

The Blanket Orders provide MFRI and their supervisors with easily accessible course options that offer more relevant information regarding alternative mutual funds thereby enabling these registrants to satisfy their “know your product” and “suitability” obligations in relation to their clients under applicable securities laws. More importantly, the Blanket Orders will open a new distribution channel for alternative mutual funds throughout Canada and significantly improve access for Canadian retail investors to the potential benefits provided by alternative mutual fund investment products.

If you have any questions regarding the Blanket Orders, please contact a member of McMillan’s Investment Funds and Asset Management Group.

[1] NI 81-104, s. 4.1.

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### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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