



IN THE MATTER OF THE *SECURITIES ACT*
(SY 2007, c. 16 as amended)

-and-

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

SUPERINTENDENT ORDER 2020/08 Y.S.A.
(under section 16 of the *Securities Act*)

WHEREAS to address some of the challenges presented by the COVID-19 pandemic, Affected Mutual Funds may benefit from additional flexibility in respect of certain obligations under securities legislation;

AND WHEREAS specifically, 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 five per cent limit on borrowing imposed by subparagraph 2.6(1)(a)(i) of NI 81-102 (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;

AND WHEREAS the Superintendent expects that each securities regulatory authority will issue orders providing exemptions or variations similar to those provided in this order, except where an exemption or variation is not required in a jurisdiction;

AND WHEREAS the Superintendent is satisfied, having considered the interests of Affected Mutual Funds that may be impacted by COVID-19 and the needs of some investors to redeem securities and others to continue to invest with Affected Mutual Funds that, subject to the conditions of this Instrument, it is appropriate to provide a temporary variation of the five per cent limit on borrowing in subparagraph 2.6(1)(a)(i) of NI 81-102;

AND WHEREAS the Superintendent has determined that it would not be prejudicial to the public interest to make this Order,

IT IS ORDERED THAT:

1. Terms defined in the *Securities Act*, National Instrument 14-101 *Definitions*, National Instrument 81-102 *Investment Funds* (NI 81-102), National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106), or National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107), have the same meaning in this Instrument.

2. In this Instrument, “Affected Mutual Fund” means a mutual fund that is subject to NI 81-102, other than a labour sponsored or venture capital fund, and that invests in fixed income securities.
3. The Borrowing Limit is varied for an Affected Mutual Fund so that the outstanding amount of all borrowings made for the Affected Mutual Fund for the period from April 17, 2020 to July 31, 2020 must not exceed 10 percent of its net asset value at the time of a borrowing, provided that the Affected Mutual Fund complies with the following conditions:
 - (a) the Affected Mutual Fund does not rely on the variation except 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;
 - (b) if the outstanding amount of all borrowings made by the Affected Mutual Fund exceeds 15 percent 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 percent or less of its net asset value;
 - (c) if the outstanding amount of all borrowings made by the Affected Mutual Fund exceeds 15 percent 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 Director of the Investment Funds and Structured Products Branch at the Ontario Securities Commission by email at IFSPDirector@osc.gov.on.ca;
 - (d) the investment fund manager of the Affected Mutual Fund 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;
 - (e) the investment fund manager of the Affected Mutual Fund must have written policies and procedures for relying on the variation from the Borrowing Limit that require the Affected Mutual Fund to do all of the following:
 - (i) prior to each borrowing above the Borrowing Limit, consider the use of other measures instead of, or in addition to, reliance on the variation, including other liquidity risk management tools and/or the suspension or limitation of redemptions;
 - (ii) 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;

- (iii) 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;
 - (iv) implement controls on decision making on borrowing above the Borrowing Limit and monitoring of such decision-making;
 - (v) 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;
 - (vi) 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 as agreed to by the independent review committee;
- (f) before each time the 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 variation from the Borrowing Limit, considering the policies and procedures set out in section 3(e) of this order;
- (g) before the Affected Mutual Fund first relies on this order, the investment fund manager of the Affected Mutual Fund must obtain the approval of the independent review committee of the Affected Mutual Fund under subsection 5.2(2) of NI 81-107 to rely on the variation from the Borrowing Limit, as if subsection 5.2(2) of NI 81-107 applies;
- (h) the investment fund manager of the Affected Mutual Fund must keep a record of each instance where the variation was relied upon, 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 rely on the variation.
- (i) the Affected Mutual Fund must
- (i) disclose how the variation was used, and the reason why it was necessary to use it, in each management report of fund performance required to be filed after it relied on the variation;
 - (ii) as soon as reasonably practicable and prior to relying on this order for the first time:

- A. notify the Director of the Investment Funds and Structured Products Branch at the Ontario Securities Commission by email at IFSPDirector@osc.gov.on.ca stating that the Affected Mutual Fund intends to rely on this order; and
 - B. 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; and
- (j) if the outstanding amount of all borrowings made by the Affected Mutual Fund exceeds 5 percent of its net asset value as of August 14, 2020, the Affected Mutual fund must, as soon as reasonably practicable, notify the Director of the Investment Funds and Structured Products Branch at the Ontario Securities Commission by email at IFSPDirector@osc.gov.on.ca.
4. This order is effective April 17, 2020.

DATED at Whitehorse, Yukon, this 17th day of April, 2020.

Fred Pretorius (original signature on file)
Fred Pretorius
Superintendent of Securities