

# FASKEN

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INVESTMENT FUNDS PRACTICE GUIDE

## Law and Practice

Canada 2025



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# 1 Market Overview

## 1.1 State of the Market

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Canada has a well-established and diversified investment funds market that includes both a highly regulated retail funds sector and a growing, sophisticated alternative investment funds sector.

### **Alternative Investment Funds Market**

The Canadian alternative funds market continues to expand, driven by investor appetite for diversification, yield and exposure to private markets. Alternative funds in Canada typically include hedge funds, private equity and venture capital funds, infrastructure and real estate funds, and private credit vehicles. These funds are often structured as limited partnerships or trusts and distributed by way of prospectus exemption under National Instrument 45-106 – Prospectus Exemptions (NI 45-106). Regulatory oversight is lighter than for retail funds, with fewer investment restrictions but greater emphasis on disclosure and suitability at the point of sale.

### **Retail Funds Market**

Canada's retail funds market is one of the most developed globally, with assets under management in mutual funds and exchange-traded funds (ETFs) exceeding CAD2 trillion. These funds are primarily governed by National Instrument 81-102 – Investment Funds (NI 81-102), which imposes detailed requirements relating to liquidity, leverage, investment restrictions, custody and disclosure. Canadian investors have access to a broad range of retail investment products, including fixed income, equity, balanced and sector-specific funds. Distribution is generally conducted through registrants such as dealers or advisers, with oversight by provincial securities regulators and the Canadian Investment Regulatory Organization (CIRO).

### **Market Activity in the Past Year**

The Canadian funds market remained active over the past year despite macroeconomic headwinds. While fundraising activity in the private markets slowed somewhat compared to the post-pandemic boom, asset managers continued to launch sector-focused funds (eg, energy transition, technology and real estate credit) and follow-on vehicles to support existing portfolio companies. The ETF market saw continued growth, especially in thematic and actively managed products. On the regulatory side, Canadian securities regulators maintained a focus on investor protection, ESG-related disclosures, and the use of AI and digital tools in the funds industry.



## 2 Alternative Investment Funds

### 2.1 Fund Formation

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#### 2.1.1 Fund Structures

The choice of legal structure for alternative investment funds in Canada, as in many jurisdictions, is primarily influenced by two key factors: tax implications and the degree of liability protection offered to investors. Among the options available, the limited partnership stands out as the most frequently utilised legal vehicle for alternative investment funds in Canada. This preference stems from the limited partnership's ability to offer both tax transparency and limited liability protection to its investors, making it an attractive choice for fund managers and investors alike.

#### 2.1.2 Common Process for Setting Up Investment Funds

Alternative funds — including private equity, venture capital, private credit, real estate, and infrastructure funds — are typically structured as limited partnerships formed under provincial partnership legislation, with a corporate general partner and a separate management or advisory entity.

Private alternative funds themselves are not subject to direct registration or approval by Canadian securities regulators, provided that all securities are offered in reliance on exemptions under NI 45-106.

The following are the core documents typically prepared in connection with an alternative fund launch:

- limited partnership agreement;
- subscription agreement;
- management agreement; and
- side letter (for some limited partners).

Some fund sponsors use a marketing deck or a private placement memorandum to offer the fund.

The formation process for alternative funds is relatively efficient but varies from case to case. From mandate to first close, the timeline typically ranges from ten to 16 weeks, depending on complexity and investor negotiations. Both internal factors specific to the fund sponsor, such as its track record, investment thesis, and size and external factors such as macroeconomic and geopolitical considerations, interest rates and the risk aversion of investors in times of uncertainty, may result in the fundraising process being the most lengthy part of launching an alternative fund.



Relative to international fund formation hubs, establishing an alternative fund in Canada is reasonably priced. Legals fees vary depending on many factors including the complexity of the structure, number and sophistication of limited partners and extent of customisation.

### **2.1.3 Limited Liability**

In Canada, limited partnerships can be formed under the laws of any province or territory. The legal framework governing limited partnerships is largely consistent across Canadian jurisdictions, offering liability protection to investors who do not play an active part in the partnership's business.

### **2.1.4 Disclosure Requirements**

If a private placement memorandum (PPM) is used, the applicable laws in certain Canadian jurisdictions grant investors statutory rights to rescission or damages if the PPM contains misrepresentations.

## **2.2 Fund Investment**

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### **2.2.1 Types of Investors in Alternative Funds**

The investor appetite for alternative funds in Canada remains good for all alternative asset classes and with respect to all types of investors (institutional investors, accredited investors and HNW clients, family offices, government investors and increasingly, for retail investors).

### **2.2.2 Legal Structures Used by Fund Managers**

See **2.1.1 Fund Structures**.

### **2.2.3 Restrictions on Investors**

Most alternative investment funds in Canada are distributed under exemptions from prospectus requirements under NI 45-106.

The most commonly used exemptions for such distributions are the private issuer exemption and the accredited investor exemption which require the fund sponsor to ensure that all investors are "accredited investors" at the time of their investment.



Beyond these prospectus exemptions, there are no additional restrictions on the types of investors that can invest in alternative investment funds in Canada.

## 2.3 Regulatory Environment

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### 2.3.1 Regulatory Regime

As previously described, alternative funds themselves are not subject to direct registration or approval by Canadian securities regulators, provided that all securities are offered in reliance on exemptions under NI 45-106.

In most cases, fund managers/sponsors also do not require any registrations under securities laws to distribute or manage alternative funds. However, while rare, the management of certain more passive strategies or the more widespread or frequent distribution of alternative funds may trigger registration requirements for the manager.

There are no specific regulatory limitations on the investment activities of alternative investment funds in Canada, allowing for flexibility in investment strategies and asset allocation.

### 2.3.2 Requirements for Non-Local Service Providers

Non-local service providers – including administrators, custodians and director services providers – are not subject to regulation/registration requirements.

### 2.3.3 Local Regulatory Requirements for Non-Local Managers

The registration requirements outlined in **2.3.1 Regulatory Regime** also apply to non-local managers of alternative funds in Canada. Even if the registration requirements are triggered, exemptions are available to non-Canadian managers who are already registered in their home jurisdiction.

### 2.3.4 Regulatory Approval Process

This is not applicable in Canada.

### 2.3.5 Rules Concerning Pre-Marketing of Alternative Funds

Other than complying with the prospectus exemption (described in **2.2.3 Restrictions on Investors**), there are generally no specific regulations addressing pre-marketing activities for alternative funds.



### **2.3.6 Rules Concerning Marketing of Alternative Funds**

See **2.3.5 Rules Concerning Pre-Marketing of Alternative Funds**.

### **2.3.7 Marketing of Alternative Funds**

If using the private issuer or accredited investor exemption, alternative funds should only be marketed to “accredited investors”. See **2.2.3 Restrictions on Investors**.

### **2.3.8 Marketing Authorisation/Notification Process**

Authorisation or notification is not required by the national regulator prior to the marketing of alternative funds.

### **2.3.9 Post-Marketing Ongoing Requirements**

Some prospectus exemptions (eg, the accredited investor exemption) require alternative funds to make certain filings when distributing to their Canadian investors.

### **2.3.10 Investor Protection Rules**

There are no additional investor protection provisions or regulatory reporting requirements.

### **2.3.11 Approach of the Regulator**

The regulatory authorities in Canada are generally approachable and willing to engage in constructive dialogue with industry participants. Face-to-face meetings with regulatory officials are possible when circumstances warrant such direct interaction.

## **2.4 Operational Requirements**

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Alternative investment funds are not regulated in Canada.

## **2.5 Fund Finance**

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Borrowing for alternative funds is generally limited to capital call facilities. Restrictions on borrowing are typically negotiated with investors and outlined in the fund’s constituting documents. It is standard practice for lenders to



require a security interest on capital commitments and a power of attorney in case of defaults. NAV loans remain rare in Canada.

## 2.6 Tax Regime

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Limited partnerships are generally not subject to Canadian federal income tax. Instead, the general partner calculates the partnership's income and losses for each fiscal period and allocates them to partners, who report their share on their income tax returns. Income sources, including capital gains and losses, retain their character when allocated to partners, making the limited partnership tax-transparent.

However, certain exceptions exist, such as specified investment flow-through (SIFT) partnerships, which may be taxed on some categories of Canadian income, including capital gains, if their investments are (or become) listed or traded on a public market.



## 3 Retail Funds

### 3.1 Fund Formation

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#### 3.1.1 Fund Structures

Canada's retail investment fund market is well developed and tightly regulated. The principal types of retail funds include mutual funds and ETFs, both of which are typically structured as open-end trusts, although corporations are also occasionally used.

Mutual fund trusts are the most familiar and widely accepted structure. They offer flow-through tax treatment and flexibility for launching multiple series or classes of units with different fee structures, and they are operationally efficient for daily pricing and subscriptions/redemptions. Investors investing in trusts subscribe for units.

Mutual fund corporations historically offered tax deferral benefits by allowing the offsetting of capital gains and losses across different classes but have lost some of that flexibility due to tax law changes in 2016 limiting the switching of assets between classes on a tax-deferred basis. Mutual fund corporations, despite the elimination of the tax-free switch mechanism, remain relevant in Canada for several reasons – see **3.6 Tax Regime**. Investors investing in mutual fund corporations subscribe for shares.

#### 3.1.2 Common Process for Setting Up Investment Funds

To offer a retail fund to the public, the fund must file and obtain a receipt for a prospectus with the relevant securities regulators through the Canadian Securities Administrators (CSA) passport system. Key requirements include:

- filing of a preliminary and final simplified prospectus and Fund Facts (for mutual funds) or ETF Facts (for ETFs); and
- approval from the principal regulator, which then grants a passport receipt applicable across most provinces and territories (with a separate filing typically required in Quebec).

The fund manager must be registered as an investment fund manager. The investment adviser must be registered as a portfolio manager. The entity distributing the fund must generally be registered as dealer. The key documents involved in the formation and launch of a retail fund include (but are not limited to):

- a declaration of trust (for mutual fund trusts) or articles and by-laws (for mutual fund corporations);



- a simplified prospectus, and Fund Facts;
- a management agreement;
- sub-advisory or portfolio management agreements (if applicable); and
- a custody agreement.

The set-up and approval process for a retail fund is relatively lengthy compared to private funds. From initial structuring to final regulatory approval and launch, the process typically takes at least three to six months. Launching a retail fund in Canada is relatively expensive, due to regulatory, legal and operational requirements, and the need to translate it into French (if offered in Quebec). Fees associated with launching a retail fund in Canada must be paid by the fund sponsor.

### **3.1.3 Limited Liability**

For mutual fund trusts, investors hold units of the trust and are considered beneficiaries under provincial trust law. Their liability is generally limited to the amount of their investment. The declaration of trust typically includes an express limitation of liability clause stating that unitholders are not personally liable for the obligations of the fund or the trustee.

For mutual fund corporations, investors hold shares of the corporation and benefit from the limited liability protections afforded under Canadian corporate law. Shareholders are generally not responsible for the debts or liabilities of the fund beyond the value of their investment. Their liability is limited to the capital invested in their shares.

### **3.1.4 Disclosure Requirements**

Canadian retail funds are subject to extensive disclosure and reporting obligations under securities regulations, primarily National Instrument 81-101 – Mutual Fund Prospectus Disclosure (NI 81-101), NI 81-102, and National Instrument 81-106 – Investment Fund Continuous Disclosure (NI 81-106).

Key requirements include:

- Prospectus disclosure – funds must file a simplified prospectus and deliver a Fund Facts (or ETF Facts) document to investors at or before the point of sale.
- Financial reporting – funds must prepare and file annual audited and interim unaudited financial statements, along with Management Reports of Fund Performance (MRFPs).



- Material change reporting – a fund must issue a press release and file a report if a material change occurs (eg, a strategy shift, change in managers or a fund merger).
- Governance disclosure – funds must disclose proxy voting records and provide annual reports from the Independent Review Committee (IRC), which oversees conflicts of interest.

All disclosure documents must be filed on SEDAR+ (Canada’s official platform for filing and accessing regulatory documents) and made available to investors. These requirements ensure transparency and investor protection in the retail market.

## 3.2 Fund Investment

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### 3.2.1 Types of Investors in Retail Funds

Investor appetite for retail funds in Canada remains strong and diversified, reflecting a mature and stable market. As of 2024, total assets under management in Canadian mutual funds and ETFs exceeded CAD2 trillion, with retail funds serving as a core investment vehicle for Canadian households.

### 3.2.2 Legal Structures Used by Fund Managers

In Canada, retail fund managers are typically structured as corporations, most often federally or provincially incorporated companies.

### 3.2.3 Restrictions on Investors

Most retail investment funds in Canada are designed to be widely accessible, with relatively low minimum investment requirements and simplified investment processes. This accessibility is intended to encourage broad participation from various types of investors (ie, individual investors who can invest through various accounts including registered accounts; institutional investors such as pension funds, endowments and foundations; and accredited investors including HNW individuals and entities with significant assets), promoting diversification and the pooling of capital for investment purposes.

Certain sector-focused retail investment funds may have additional suitability requirements or restrictions to ensure that investors understand the risks involved and that the fund is appropriate for their investment objectives and risk profile.



## 3.3 Regulatory Environment

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### 3.3.1 Regulatory Regime

Retail investment funds in Canada are governed by a comprehensive regulatory framework designed to ensure investor protection, product transparency, and liquidity.

Retail funds must be qualified by a prospectus, subject to regulatory review and continuous disclosure requirements. Retail funds must appoint a registered investment fund manager, a qualified portfolio manager, and a qualified custodian (see below). An Independent Review Committee (IRC) must oversee conflicts of interest as provided under National Instrument 81-107 – Independent Review Committee for Investment Funds (NI 81-107).

Retail funds are subject to detailed rules on valuation, liquidity, leverage, borrowing, derivatives use, and securities lending. They are subject to a range of investment restrictions and limitations, including the following.

#### *Key Rules Applicable to Retail Funds*

##### **Concentration limits**

A mutual fund cannot invest more than 10% of its net asset value (NAV) in the securities of any single issuer. This limit helps ensure diversification and reduce the risk associated with a concentrated investment in any one issuer.

##### **Control restrictions**

A mutual fund cannot hold more than 10% of the outstanding voting securities of any issuer. This rule prevents funds from exerting undue influence or control over the companies in which they invest.

##### **Prohibited investments**

Mutual funds are generally prohibited from investing in certain types of securities, including physical commodities, mortgages (other than guaranteed mortgages), real estate (other than listed real estate investment trusts – REITs), and loans.

##### **Illiquid assets**

A mutual fund cannot invest more than 10% of its NAV in illiquid assets. Illiquid assets are those that cannot be readily sold or disposed of in the ordinary course of business within seven days at their fair value.

##### **Borrowing and leverage**

Traditional mutual funds are generally not allowed to borrow money or use leverage, except for temporary borrowing to meet redemption requests or to settle portfolio transactions (up to 5% of the fund's NAV). Alternative mutual funds, however, are permitted to use leverage, with a total leverage exposure limit of 300% of the fund's NAV.



### ***Short selling***

Traditional mutual funds are not permitted to engage in short selling. Alternative mutual funds are allowed to short-sell securities, with the maximum aggregate market value of securities sold short not exceeding 50% of the fund's NAV. Additionally, the fund must hold cash cover equal to at least 150% of the market value of the securities sold short.

### ***Derivatives***

Mutual funds can use derivatives for hedging purposes and non-hedging purposes, subject to certain conditions.

### ***Related party transactions and conflicts of interests***

Mutual funds are subject to restrictions on transactions with related parties, including the fund manager, portfolio adviser, and their affiliates.

### ***Qualified custodian***

The assets of a mutual fund must be held by a qualified custodian. Qualified custodians typically include banks, trust companies and other financial institutions that meet specific regulatory requirements. The custodian must generally be a Canadian entity or have a Canadian affiliate that is a qualified custodian. In certain limited circumstances, assets of Canadian retail investment funds may be held outside Canada by a qualified foreign custodian or sub-custodian, if appropriate to facilitate portfolio transactions of the investment fund outside Canada.

## **3.3.2 Requirements for Non-Local Service Providers**

See **3.3.1 Regulatory Regime**.

## **3.3.3 Local Regulatory Requirements for Non-Local Managers**

Non-Canadian managers that seek to offer retail investment funds to retail clients in Canada are generally subject to Canadian securities laws and must comply with the same regulatory framework applicable to domestic fund sponsors.

Exemptions may be available to non-Canadian managers looking to distribute a non-Canadian retail fund to non-retail investors (permitted clients).

## **3.3.4 Regulatory Approval Process**

For retail investment funds in Canada, regulatory approval is required through the prospectus review process, administered by the CSA under the passport system.



The typical timelines vary between eight to 12 weeks from the filing of the preliminary prospectus to receipt of the final prospectus, assuming there are no major issues or deficiencies, and four to six weeks to add a new fund to an existing shelf, as the issuer benefits from an established filing history and streamlined review.

Where the fund will be listed on an exchange (eg, the TSX or NEO), the exchange listing process runs in parallel and usually does not significantly extend the timeline if co-ordinated properly.

These timelines may vary depending on the completeness of the submission, the complexity of the strategy, and whether the issuer is seeking exemptive relief (eg, for novel fund features).

### **3.3.5 Rules Concerning Pre-Marketing of Retail Funds**

Canadian securities laws prohibit the sale of mutual fund units or shares before the fund's prospectus has been received by the relevant securities regulatory authority. This means that no sales can be made, and no binding commitments can be accepted from investors during the pre-marketing phase. The distribution or publication of advertisements, sales literature, or other promotional materials that solicit or recommend the purchase of mutual fund securities is generally prohibited before the prospectus has been received.

Investment fund managers may communicate with potential investors and financial advisers to provide general information about the fund and its investment objectives, strategies and features. However, these communications must not be promotional in nature and must clearly indicate that the fund has not yet been received and that no sales can be made until the receipt is issued.

Nevertheless, prior to launching any pre-marketing activities, it is recommended that investment fund managers engage legal and compliance professionals to review pre-marketing activities and materials, to ensure compliance with applicable securities laws and regulatory requirements.

### **3.3.6 Rules Concerning Marketing of Retail Funds**

Firms marketing retail funds must generally be registered as mutual fund dealers or investment dealers. A Fund Facts (or ETF Facts) document must be delivered to investors at or before the point of sale, in accordance with NI 81-101 and National Instrument 41-101 – General Prospectus Requirements (NI 41-101).

Sales communications must present performance data using standardised periods (eg, one, three, five and ten years) and prescribed calculation methods, to ensure consistency and comparability. Appropriate disclaimers and explanations are required to help investors interpret performance figures. Marketing materials must refer investors to the fund's prospectus and Fund Facts, which provide a concise summary of investment objectives, performance, risks and fees.



National Instrument 81-105 – Mutual Fund Sales Practices (NI 81-105) also regulates sales practices and prohibits compensation arrangements that could create conflicts of interest. For example, fund managers may not provide incentives to dealers or representatives that could unduly influence investment recommendations. All compensation and sales incentives must be fully disclosed in the fund’s offering documents.

### **3.3.7 Marketing of Retail Funds**

In Canada, retail investment funds can be marketed to all members of the public, including individual retail investors, institutional investors, advised clients and self-directed investors. There are no eligibility or accreditation requirements for investors purchasing prospectus-qualified retail funds.

### **3.3.8 Marketing Authorisation/Notification Process**

See **3.3.4 Regulatory Approval Process**.

### **3.3.9 Post-Marketing Ongoing Requirements**

For firms that have marketed a retail fund in Canada, there are several ongoing regulatory requirements that must be adhered to in order to ensure continued compliance with Canadian securities laws. These requirements are designed to maintain transparency, protect investors, and uphold the integrity of the financial markets.

The specific requirements can vary by province or territory, but generally include the following.



## Regulatory Requirements for Marketing a Retail Fund

<b>Continuous disclosure obligations</b>	Funds must file and deliver to investors annual and interim financial statements; MRFPs; updated Fund Facts or ETF Facts documents; material change reports, if applicable.
<b>Prospectus renewals</b>	The prospectus for a retail fund must be renewed every two years. This involves updating the prospectus to reflect any changes in the fund's operations, investment strategies, risks, fees and other relevant information.
<b>Fund facts renewal</b>	The Fund Facts document for each class or series of securities of the investment fund must be updated no sooner than 13 months and no later than 11 months before the lapse date of the previous prospectus.
<b>Compliance with ongoing regulatory obligations for registered firms</b>	Registered firms (the investment fund manager, the portfolio manager and dealer) must comply with capital, insurance, reporting and conduct obligations under National Instrument 31-103 – Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103) and are subject to periodic reviews from the securities commissions or the Canadian Investment Regulatory Organization (CIRO).
<b>Conflict of interest matters/NI 81-107</b>	Managers of retail investment funds must refer conflict-of-interest matters to the IRC for review, recommendation or approval. The manager must comply with the IRC's recommendations and ensure that the investment fund operates in accordance with the approved policies and procedure.

### 3.3.10 Investor Protection Rules

In addition to the general framework provided by NI 81-107 governing conflict-of-interest matters, Canadian securities regulations include several investor protection provisions and regulatory reporting requirements for retail investment funds.



### *Suitability Requirements*

Know Your Client (KYC): Investment fund managers and dealers must collect detailed information about their clients' financial situation, investment knowledge, risk tolerance and investment objectives to ensure that any recommendations or transactions are suitable for the client.

Know Your Product (KYP): Representatives of mutual fund dealers and investment dealers must thoroughly understand the products they offer to ensure they are appropriate for their clients.

### *The Canadian Investor Protection Fund (CIPF)*

The Canadian Investor Protection Fund (CIPF) is a non-profit compensation fund that provides limited protection to clients of insolvent investment dealers that are members of CIRO.

### *Statutory Right of Action*

Applicable laws in certain Canadian jurisdictions grant investors statutory rights to rescission or damages if the prospectus, Fund Facts or financial statements of a retail fund contain a misrepresentation.

### **3.3.11 Approach of the Regulator**

See **3.3.4 Regulatory Approval Process**.

## **3.4 Operational Requirements**

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See **3.3.1 Regulatory Regime**.

## **3.5 Fund Finance**

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See **3.3.1 Regulatory Regime**.

## **3.6 Tax Regime**

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In Canada, the tax regime applicable to retail mutual funds is decided by whether the fund is structured as a trust or corporation. The following is an overview of the key tax considerations for each structure.



## **Mutual Fund Trusts**

### *Taxation at the trust level*

**Flow-through status:** Mutual fund trusts generally qualify as flow-through entities for tax purposes. This means that the trust itself is not subject to tax on its income, provided it distributes all of its net income (including net realised capital gains) to its unitholders within the year.

**Distribution of income:** The trust must distribute its income to unitholders, who then include their share of the income in their personal tax returns. The types of income distributed can include interest, dividends, foreign income and capital gains.

### *Taxation at the unitholder level*

**Interest and foreign income:** These are taxed as ordinary income at the unitholder's marginal tax rate.

**Dividends:** Canadian dividends may be subject to a preferential tax rate to reflect the corporate taxes already paid on this income.

**Capital gains:** Only 50% of capital gains is taxable, providing a tax advantage to unitholders receiving capital gains distributions.

### *Other considerations*

**Return of capital:** Distributions classified as a return of capital are not taxable but reduce the adjusted cost base (ACB) of the units, potentially resulting in a higher capital gain (or smaller capital loss) when the units are sold.

**Foreign reporting:** Trusts with significant foreign investments may have additional reporting requirements.

## **Mutual Fund Corporations**

### *Taxation at the corporate level*

**Taxation of income:** Mutual fund corporations are subject to corporate tax on their income, but they can generally deduct dividends paid to shareholders and certain expenses.

**Capital gains refund mechanism:** Corporations can benefit from a capital gains refund mechanism, which allows them to recover taxes paid on capital gains if they distribute sufficient dividends to shareholders.



### *Taxation at the shareholder level*

**Dividends:** Shareholders are taxed on dividends received. Eligible dividends are subject to a preferential tax rate, while non-eligible dividends are taxed at a higher rate.

**Capital gains:** Shareholders realise capital gains (or losses) when they sell their shares. Only 50% of capital gains is taxable.

**Reinvestment plans:** Some mutual fund corporations offer dividend reinvestment plans (DRIPs), allowing shareholders to reinvest their dividends into additional shares which may be issued at a small discount without triggering immediate tax consequences.

### *Other considerations*

Mutual fund corporations, despite the elimination of the tax-free switch mechanism, remain relevant in Canada for several reasons. Here are some of the key factors contributing to their continued relevance.



### *Tax efficiency in distributions*

**Preferential tax rate:** Mutual fund corporations can distribute Canadian dividends to shareholders, who may benefit from a preferential tax rate. This allows for more favourable tax treatment compared to interest income.

**Capital gains refund mechanism:** Mutual fund corporations can benefit from the capital gains refund mechanism, which allows them to recover taxes paid on capital gains if they distribute sufficient dividends to shareholders. This can help minimise the tax impact on the corporation.

### *Flexibility in investment strategies*

**Multiple share classes:** Mutual fund corporations can offer multiple classes of shares, each representing a different investment strategy or asset class. This allows investors to diversify their portfolios within a single corporate structure.

For more information about the Canadian tax treatment of mutual funds, see the book entitled *Taxation of Mutual Funds and Their Investors* authored by Mitch Thaw, a former Fasken tax partner.



## 4 Legal, Regulatory or Tax Changes

### 4.1 Recent Developments and Proposals for Reform

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Below are some of the recent developments and proposals in the investment funds market in Canada.

#### **Creation of CIRO and Consolidation of the Rules Governing Investment and Mutual Fund Dealers**

The creation of CIRO on 1 January 2023 represented a significant development in the Canadian regulatory landscape applicable to the distribution of investment funds, including retail mutual funds. CIRO is the result of the consolidation of two existing self-regulatory organisations (SROs) in Canada: the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA). This consolidation aims to streamline regulatory oversight, enhance investor protection, and improve the efficiency of the regulatory framework. The consolidation of IIROC and MFDA into CIRO has created a single, unified regulatory framework for investment dealers and mutual fund dealers. This unified approach may lead to more consistent and streamlined regulatory oversight across different types of investment firms. The creation of CIRO may encourage the consolidation of distribution channels for retail mutual funds. Investment firms that previously operated under separate regulatory regimes for mutual fund dealers and investment dealers may find it more efficient to integrate their operations and distribution channels under a single regulatory framework. Since the creation of CIRO, there appears to have been an increase in the number of dealing firms being duly registered as investment and mutual fund dealers.

#### **Rise of Responsible Investing and ESG Funds**

ESG funds are becoming increasingly popular, as investors seek to align their investments with their values. These mutual funds consider ESG factors in their investment decision and aim to promote sustainable and responsible business practices. In light of their increased popularity in 2024, the CSA updated its previously published staff notice entitled “CSA Staff Notice 81-334 ESG-Related Investment Fund Disclosure (Revised)”. This revised notice does not change the guidance that was published in January 2022. Rather, it addresses matters that were not covered in the original notice and reflects developments and issues that have arisen since. The update also includes guidance addressing different levels of disclosure expectations for mutual funds whose investment objectives do not reference ESG factors, but that use ESG strategies. Generally, the guidance sets out different levels of disclosure expectations depending on the extent to which ESG factors are considered in a fund’s investment process.



### **Alternative Mutual Funds (As Defined in NI 81-102)**

The introduction of liquid alternative mutual funds offered by prospectus (“liquid alts”) has provided retail investors with access to alternative investment strategies that were previously only available to institutional investors. These funds use strategies such as long/short equity, market neutral, and global macro to diversify portfolios and manage risk.

### **Fee Transparency (Total Cost Reporting Reform)**

The Total Cost Reporting (TCR) reform is a significant initiative by Canadian securities regulators to enhance transparency around the costs associated with investment fund ownership. Jointly introduced by the CSA and the Canadian Council of Insurance Regulators (CCIR), the TCR aims to enhance fee transparency and investor understanding by ensuring that clients receive a comprehensive, dollar-based report of the total costs they incur when investing in investment funds and other securities.

### **Crypto-Assets Mutual Funds As Reporting Issuers**

Canada has been at the forefront of regulatory innovation in the cryptocurrency space, leading to the creation and approval of various crypto-asset investment vehicles, including closed-end investment funds, mutual funds and ETFs offered to retail investors. The CSA has issued guidance on the custody, valuation and risk disclosure requirements for crypto-asset investment funds. Regulators emphasise the importance of clear and comprehensive disclosure, to ensure that retail investors understand the risks associated with crypto-asset investments. This includes providing information on market volatility, regulatory risks and technological risk.



## Authors

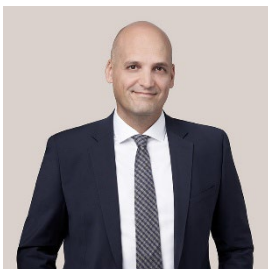
**Fasken** was founded in the mid-19th century and merged with another leading firm in 2000 to form what is now one of the largest firms in Canada with an international reach. A premier law firm with over 950 lawyers worldwide, Fasken's investment products and wealth management group is composed of legal professionals who have in-depth knowledge of all the different types of investment vehicles used in Canada to regroup the assets of retail, HNW or institutional investors, and deploy various investment strategies.



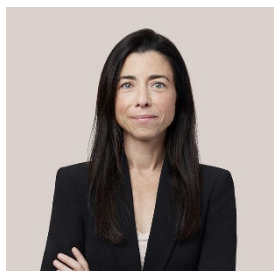
**Jonathan Halwagi** provides counsel in the areas of asset management and investment funds. His practice at Fasken focuses on the establishment of fund structures with an emphasis on alternative asset management (including private equity, venture capital, infrastructure and lending). He also regularly acts for Canadian and international asset managers, assisting them with compliance with applicable Canadian securities laws and regulations. Jonathan assists asset managers in their dealings with Canadian regulators and counsels them on acquisitions, joint ventures and mergers. Before joining Fasken, Jonathan practised with a leading UK law firm in its investment funds group.



**Anabel Quessy** focuses on fund formation and on serving the investment management industry. As part of the fund formation team at Fasken, Anabel regularly assists managers in setting up new closed-end and open-end funds of all alternative asset classes (eg, private equity, venture capital, real estate, infrastructure and private debt) and counsels managers in market intelligence, risk management, governance and compliance with applicable securities laws and regulations. Anabel's experience extends to all entities forming part of fund structures. She also advises institutional investors in their investments in alternative fund and in hedge fund structures. In addition, Anabel advises tax-advantaged funds in corporate and regulatory matters.



**Eric Blondeau** is a partner in the corporate/commercial group in Fasken's Montreal office and has nearly 20 years' experience in asset management, investment funds, M&A and corporate transactions. His primary focus is on asset management and establishing private investment funds, including private equity, infrastructure, real estate, private lending and venture capital funds. Eric also assists asset managers with M&A, investments, joint ventures and other related activities. Having worked in the investment management industry for most of his career, Eric is well known for his extensive knowledge of the industry and the various issues affecting private fund managers. He is also recognised for his ability to carry out complex projects.



**Élise Renaud** is a partner in Fasken's investment products and wealth management group, with in-depth knowledge of the laws and regulations applicable to Canadian wealth management and financial services. She focuses on the regulatory environment governing the daily activities of dealers, portfolio managers and investment fund managers. She also advises clients in transactions outside the ordinary course of business (eg, when selling or purchasing assets under management or administration, or establishing partnerships). Élise also advises fund managers on creating investment funds, distributing securities and in the management of investment funds. She has been recognised by Chambers and Partners as a leading lawyer in the Canadian investment fund market.

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Fasken is a leading law firm with more than 950 lawyers and 10 offices on three continents. Clients rely on us for practical and innovative legal services.

We provide results-driven strategies to solve the most complex business and litigation challenges.



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