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NATIONAL INSTRUMENT 81-107

Independent Review Committee for Investment Funds

Q&A

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Answers to questions you may be asking about National Instrument 81-107

INDEPENDENT REVIEW COMMITTEE FOR INVESTMENT FUNDS

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NATIONAL INSTRUMENT 81-107

ANSWERS TO QUESTIONS YOU MAY BE ASKING ABOUT NATIONAL INSTRUMENT 81-107

Independent Review Committee for Investment Funds

INTRODUCTION

After a lengthy comment and review period from the time it was first proposed, National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107** or **the Instrument**)[1], has now been finalized and is scheduled to come into force on November 1, 2006. The purpose of this publication is to provide a quick reference resource for some of the questions posed by the upcoming implementation of the Instrument. You should also refer to our Funds Update published in August, 2006 for a detailed overview of NI 81-107.[2]

What is NI 81-107 about?

NI 81-107 governs how investment funds are to deal with matters referred to in the Instrument as "conflict of interest matters". The Instrument primarily achieves this by requiring each investment fund to establish an independent review committee (an **IRC**), prescribing the functions of the IRC and requiring that all conflict of interest matters be submitted by the manager to the IRC for review, and – in some cases – approval. The Instrument also prescribes certain requirements with respect to record keeping, reports, reviews and assessments. As well, the Instrument prescribes certain functions for investment fund managers and introduces a minimum standard of care applicable to investment fund managers and to the IRC.

What entities does NI 81-107 apply to?

NI 81-107 applies to all investment funds that are reporting issuers. This includes all publicly offered mutual funds and non-redeemable investment funds as well as labour sponsored funds, venture capital funds, scholarship plans, and funds not governed by National Instrument 81-102 *Mutual Funds*. It does not apply to investment funds that are not reporting issuers (often referred to as "pooled funds").

1 (2006) 29 OSCB (Supp-1). Unless otherwise indicated all references to sections or paragraph numbers are to the Instrument. References to the "Commentary" refer to the commentary of the Canadian Securities Administrators (the CSA) published along with the Instrument, which is available on the website of the OSC at http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part8/rule_20060728_81-107_independentreview.pdf.

2 The Funds Update and other related Stikeman Elliott LLP publications are available on our website at http://www.stikeman.com/en/publications/list/.

CONFLICTS OF INTEREST

What is a conflict of interest matter under the Instrument?

The Instrument defines a conflict of interest matter as "any matter where a reasonable person would consider a manager, or an entity related to the manager, to have an interest that may conflict with the manager's ability to act in good faith and in the best interests of the investment fund." In addition, the Instrument also states that conflicts of interest governed by the Instrument include actions that are restricted or prohibited under conflict of interest or self-dealing provisions of securities legislation. These include "insider trading" and "self dealing" provisions of securities legislation, such as those found in Part XXI of the *Securities Act* (Ontario).

The manager is required to refer all conflict of interest matters to the IRC, other than matters that are inconsequential. Some matters require only a recommendation of the IRC while others require the positive approval of the IRC.

What is the manager required to do when faced with a conflict of interest matter?

Unless the matter has been previously dealt with under a standing instruction, prior to embarking upon a conflict of interest matter, the manager is required to refer to securities legislation and to its own written policies and procedures to determine the appropriate course of action. Having determined its proposed course of action, the manager must then refer the matter, including its proposal, to the IRC for either its recommendation or approval.

What types of matters require IRC approval?

If a conflict of interest matter referred to the IRC involves any of the following, the manager may not proceed without the approval of the IRC:

(a) an inter-fund trade as described in subsection 6.1(2) of the Instrument or a transaction as described in subsection 4.2(1) of National Instrument 81-102 *Mutual Funds*;

(b) a transaction in securities of an issuer as described in subsection 6.2(1) of the Instrument; or

(c) an investment in a class of securities of an issuer underwritten by an entity related to the manager as described in subsection 4.1(1) of National Instrument 81-102 *Mutual Funds*.

Any conflict of interest matter that is not described above must be referred to the IRC for its recommendation only.

What about other conflict of interest matters restricted or prohibited by securities legislation?

The Commentary clarifies that to proceed with a conflict of interest matter that is prohibited or restricted by securities legislation but is not among the matters specified above (i.e. not among those identified in the Instrument as requiring IRC approval), the manager will require regulatory exemptive relief in addition to the IRC's positive recommendation.

What is required for the IRC to "approve" a conflict of interest matter?

In order to approve a conflict of interest matter, the IRC must determine, after reasonable inquiry, that the action:

(a) is proposed by the manager free from any influence by an entity related to the manager and without taking into account any consideration relevant to an entity related to the manager;

(b) represents the business judgment of the manager uninfluenced by considerations other than the best interests of the investment fund;

(c) is in compliance with the manager's written policies and procedures relating to the action; and

(d) achieves a fair and reasonable result for the investment fund.

The CSA expect that before providing its approval the IRC will ask for a report or certification, from the manager and/or other applicable individuals or entities, to assist in its determination that this test has been met. This means that managers should be prepared to support requests for IRC approval with appropriate documentation, reports, and where necessary, certifications.

Can the manager proceed if the IRC does not provide its approval?

If a proposed course of action requires IRC approval, the manager may not proceed where the IRC refuses to provide its approval as required under NI 81-107 without obtaining regulatory relief.

What is required for the IRC to "recommend" a matter?

Where a matter requires an IRC recommendation only, the IRC must provide a recommendation to the manager as to whether, in the IRC's opinion after reasonable inquiry, the proposed action achieves a fair and reasonable result for the investment fund.

Can a manager proceed if the IRC does not provide a positive recommendation?

The manager is required to *consider* the recommendation of the IRC for any matter that requires IRC recommendation. The manager may decide to proceed with a matter that the IRC does not recommend (i.e. a matter for which the IRC has not given its opinion that it is fair and reasonable) provided the manager notifies the IRC in writing before proceeding. The IRC, in turn, may then require the manager to notify securityholders of the decision by way of written notice which contains certain prescribed information. This notice must also be filed on SEDAR as soon as practicable.

What if the matter requires securityholder approval?

Any conflict of interest matter that requires securityholder approval must first be submitted to the IRC for its recommendation or approval. As discussed above, if the IRC does not approve of a matter that requires IRC approval, the manager may not proceed with the matter without obtaining regulatory relief. Where the proposed course of action requires the IRC's recommendation, the manager may proceed with or without the IRC's positive recommendation. In either case, however, the manager is required to include a summary of the IRC's decision in the notice of the meeting sent to securityholders. In addition, the IRC may require the manager to notify securityholders of the IRC's refusal to recommend the matter as set out above.

Does every conflict of interest matter need specific approval?

The Instrument allows the IRC to provide standing instructions to the manager for certain recurring events. A "standing instruction" is a written approval or recommendation from the IRC that permits the manager to proceed with a proposed action requiring IRC approval or recommendation on an ongoing basis.

If the IRC provides a standing instruction, the manager is not required to refer the same conflict of interest matter to the IRC, provided it complies with all of the conditions of the standing instruction. The manager may continue to rely on a standing instruction until the IRC notifies the manager that the standing instruction has been amended or is no longer in effect.

If the IRC has provided a standing instruction on any matter, it is required to review and assess, reaffirm or amend, and provide a report on matters subject to the standing instruction at the time it conducts its regular annual assessment. To allow the IRC to undertake these review and reporting duties, the manager is also required to provide a written report to the IRC describing each instance in which it acted in reliance on a standing instruction.

The IRC is obligated by the Instrument to notify securities regulatory authorities of any instance where the manager, in proceeding with an action, did not meet a condition imposed by the IRC in its approval. This includes conditions imposed in any standing instructions.

EXEMPTIONS FOR PROHIBITED TRANSACTIONS

In addition to prescribing IRC recommendation or approval requirements for conflict of interest matters, the Instrument also permits or provides exemptions for certain actions or transactions that are otherwise prohibited by securities legislation. These transactions include certain "inter-fund trades" and "transactions in securities of related issuers". The Instrument provides that where IRC approval is obtained, and all other applicable conditions under the Instrument are satisfied, a fund or manager may proceed with these transactions without the need to obtain regulatory approval.

What is a permitted inter-fund trade?

A permitted inter-fund trade is a trade where the portfolio manager of an investment fund purchases a security of any issuer from, or sells a security of any issuer to, another investment fund managed by the same manager or an affiliate of the manager.

What conditions apply to permitted inter-fund trades?

Under the Instrument, a permitted inter-fund trade may proceed provided that at the time of the transaction:

(a) the investment fund is purchasing from, or selling to, another investment fund to which the Instrument applies;

(b) the IRC has approved the transaction;

(c) the bid and ask price of the security is readily available;

(d) the investment fund receives no consideration and the only cost for the trade is the nominal cost incurred by the investment fund to print or otherwise display the trade;

(e) the transaction is executed at the current market price of the security;

(f) the transaction is subject to market integrity requirements; and

(g) the investment fund keeps written records for five years after the end of the fiscal year in which the trade occurred. Records relating to the most recent two years should be kept in a reasonably accessible place. These include:

– a record of each purchase and sale of securities;

– a record of the parties to the trade; and

– a record of the terms of the purchase or sale.

Where these conditions are satisfied, the Instrument provides an exemption for that particular transaction from restrictions contained in securities legislation that would otherwise prohibit it.

What are permitted transactions in securities of related issuers?

Under the Instrument, a permitted transaction in securities of a related issuer includes the making or holding by the investment fund of an investment in the security of an issuer related to it, its manager, or an entity related to the manager.

What is an "entity related to the manager"?

The Instrument defines the term "entity related to the manager" as a person or company that can direct or materially affect the direction of the management and policies of the manager or the investment fund (other than as a member of the IRC), including such person or company's associate, affiliate, partner, director, officer or subsidiary and any associate, affiliate, partner, director, officer or subsidiary of the manager. The CSA consider this to include portfolio managers, as well as portfolio advisors and sub-advisors of the investment fund, third party portfolio managers and portfolio advisors, scholarship plan administrators and any person that can materially direct or affect the manager's management or policies, including through contractual agreements or ownership of voting securities.

What conditions apply to permitted transactions in securities of related issuers?

The Instrument provides an exemption for transactions in securities of related issuers provided that the following conditions are satisfied:

(a) at the time that the investment is made, (i) the IRC has approved the investment and (ii) the purchase is made on an exchange on which the securities of the issuer are listed and traded; and

(b) no later than the time at which the investment fund files its annual financial statements, the manager of the investment fund files particulars of the investment with the applicable securities regulator.

Where these conditions are satisfied, the Instrument provides an exemption for that particular transaction from various restrictions contained in securities legislation that would otherwise prohibit such actions.

MATTERS RELATING TO INVESTMENT FUND MANAGERS

What is the impact of the manager's standard of care?

The Instrument imposes a standard of care for all managers subject to the Instrument, requiring that in exercising its power and discharging its duties related to the management of the investment fund, the manager must "act honestly and in good faith, and in the best interests of the investment fund and exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances."

Regardless of any higher or lower standard that may be contained in the fund's constating documents or in contracts between the manager and the fund, all managers who are subject to NI 81-107 will be subject to this standard, and liable for any failure to satisfy this standard in discharging their duties as investment fund managers. Managers and funds may also want to consider making amendments to fund documents or contracts to ensure that they conform to the statutory standard of care in order to avoid any complications arising from inconsistent standards or duties.

What are investment fund managers required to do under the Instrument?

Investment fund managers will be required to undertake a number of new duties or functions, which include:

- establishing policies and procedures to govern conflict of interest matters, including:
  - identifying conflict of interest matters that the manager expects will arise and determining how to address them; and
  - submitting such policies or any significant changes to them for IRC review;
- inquiring about the policies and procedures of entities related to the manager;
- maintaining a record of any activity that is subject to IRC review, including:
  - copies of policies and procedures addressing the matter;
  - minutes of the meetings of the manager in respect of such matters; and
  - copies of material including written reports provided to the IRC;
- assisting the IRC by providing sufficient information to allow it to properly carry out its duties including:
  - a description of the facts and circumstances of each conflict of interest matter;
  - the manager's policies and procedures;
  - the manager's proposed course of action; and
  - all further information reasonably requested by the IRC, including making officers available who are knowledgeable about the matter being considered;
- jointly with the IRC, providing orientation and continuing education to the members of the IRC;
- providing the IRC with reports on its reliance on standing instructions; and
- providing the IRC with any other assistance that it reasonably requests in reviewing a matter.

MATTERS RELATING TO THE IRC

What are the characteristics required of the IRC?

The Instrument requires each investment fund to establish an IRC, with the following characteristics:

- minimum of three members;
- all members independent (not just the minimum three);
- one member must be appointed as chair;
- the size must be suited to the needs of the fund, and is to be determined or changed solely by the manager, although input may be sought from the IRC;
- the chair must be responsible for managing the mandate of the IRC; and
- the IRC must have a written charter.

One IRC may be established for a group or family of funds, an IRC may be shared among managers/funds and third party IRC may be retained.

Who is independent for the purposes of IRC membership?

Under the Instrument a member of the IRC is "independent" if the member has no "material relationship" with the manager, the investment fund, or an entity related to the manager. A material relationship is defined as "a relationship which could reasonably be perceived to interfere with the member's judgment regarding a conflict of interest matter." According to the Commentary, a material relationship may include a past or existing ownership, commercial, charitable, industrial, banking, consulting, legal, accounting or familial relationship. This test must be applied on a case by case basis to determine whether or not a member or proposed member is independent.

Can an independent member of the manager's board sit on the IRC?

According to the Commentary, the CSA consider it rare that a member of the board of directors (or special committee of the board of directors) of a manager would satisfy the definition of independence under the Instrument. However, since former members of a manager's board may, depending upon the circumstances, be independent, independent board members could be appointed to an IRC provided they first resigned or ceased be members of the manager's board. The CSA also consider that depending upon the circumstances, individuals such as independent trustees, or independent members of the board of directors, advisory board or existing IRC of an investment fund may qualify as independent members of the IRC under the Instrument.

What other functions is the IRC required to perform under the Instrument?

In addition to providing oversight by way of review or approval of conflict of interest matters under the Instrument, the IRC must also perform any other function required by securities regulation. According to the Commentary, these are matters such as a change in a mutual fund's auditor and certain reorganizations and transfers of assets between related mutual funds under Part 5 of NI 81-102. The Instrument explicitly provides, however, that the IRC has no power, authority or responsibility for the operation of the fund or the manager, other than as provided in Section 4.1 of the Instrument.

Can the manager or its representatives attend IRC meetings?

The IRC has the authority to decide whether it wishes to deliberate and make decisions in the absence of the manager, or any representative or entity related to the manager. However, if the manager is represented at IRC meetings, the IRC should keep in mind that it must hold at least part or all of one meeting annually without any representative of the manager in attendance.

What should be included in the IRC's written charter?

The IRC charter must include the following:

- its mandate;
- its responsibilities and functions;
- its policies and procedures; and
- other functions to be performed as agreed to between the IRC and the manager that go beyond what is required in the Instrument.

In adopting its charter, the IRC is also required to consider any recommendations made by the manager. In making its recommendations, the manager may want to consider whether the manager should retain some involvement in certain provisions or actions such as amendments to the charter itself.

Who appoints IRC members?

The initial members of the IRC must be appointed by the manager, following which all vacancies must be filled by the IRC members themselves. If there are no members on the IRC (which may give rise to disclosure obligations) the manager must appoint a member to fill each vacancy. A member may be appointed for a term ranging from one to three years, which must be set at the time of appointment, and may not serve on the IRC for longer than six consecutive years unless agreed to by the manager. The IRC must consider the recommendation of the manager in appointing or reappointing members to the IRC. Before appointing an IRC member, the manager or the IRC must consider, at a minimum, the competencies and skills of the IRC as a whole, and of each of its members, as well as the competencies and skills of the prospective member.

How is the compensation of IRC members to be determined?

The manager may set the initial compensation and expenses for the IRC (in respect of initial members of the IRC or any members that are appointed by the manager when all memberships on the IRC are vacant). In all other circumstances, the IRC must set reasonable compensation and proper expenses for its members. In setting its compensation, the IRC must consider its most recent annual assessment of its compensation and the manager's recommendations, if any, having regard to factors such as the nature and complexity of the investment fund(s) and of the workload required, as well as industry best practices (including industry averages and surveys on IRC compensation) and the best interests of the investment fund.

Is the IRC also subject to a prescribed standard of care?

Yes, under the Instrument in exercising his or her powers and discharging his or her duties related to the investment fund every member of the IRC is required to "act honestly and in good faith, with a view to the best interests of the investment fund, and exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances."

An IRC member is considered to have complied with this standard where he or she relies in good faith upon a report or certification represented as full and true to the IRC by the manager or an entity related to the manager, or of a person whose profession lends credibility to a statement made by the person.

What authority does the IRC have?

The Instrument gives the IRC the authority to request information from the manager, engage independent counsel or advisers (and set reasonable compensation and expenses for such persons) and delegate to a subcommittee of a minimum of three members of the IRC any of the functions of the IRC, except the removal of a member under paragraph 3.10(2)(c) of the Instrument.

Where any functions are delegated to a subcommittee, the subcommittee must report on its activities at least annually to the IRC. The Instrument also specifically gives the IRC the authority to communicate directly with securities regulators with respect to any matter.

How are IRC members to make decisions?

Decisions by the IRC on conflict of interest matters or any other matters that securities legislation requires the IRC to review are to be made as follows:

- where there is only one member, no decision may be made
- where there are two members, unanimously by both members, and
- in all other cases, by an agreement of the majority of members.

Who pays fees and expenses associated with the operation of the IRC?

The Instrument provides that a fund must pay all reasonable costs and expenses incurred in compliance with the Instrument out of its assets. The fund manager, however, is not prohibited from reimbursing the fund for such costs and expenses, although it is expected that the fund prospectus would disclose whether or not this is the case. The Commentary clarifies that the types of costs expected to be charged to the fund under the Instrument do not include any amounts that the investment fund or manager would ordinarily incur in the absence of the IRC, such as rent, but may include payments for:

- the compensation and expenses payable to the members of the IRC and to any independent counsel and other advisers employed by the IRC;
- the costs of the orientation and continuing education of the members of the IRC; and
- costs and expenses associated with a special meeting of securityholders called by the manager to remove a member or members of the IRC.

The Commentary further clarifies that where one IRC serves more than one fund, the costs are to be split equitably by the manager among those funds.

Can IRC members be indemnified and insured?

Yes. The Instrument permits the investment fund or manager to indemnify an IRC member, former member and their representatives against all costs, charges and expenses reasonably incurred by the member in respect of any civil, criminal, administrative, investigative or other proceeding in which the member is involved in by virtue of being or having been a member, including amounts paid to settle an action or satisfy a judgment by, provided certain conditions are satisfied.

The Commentary clarifies that it is open to IRC members to negotiate contractual indemnities with the manager and the fund provided the protection is permissible under the indemnity provisions of the Instrument.

The Instrument also provides that an IRC member is *entitled* to be indemnified by the fund if he or she was not judged by a court or similar authority to have been at fault, acted honestly and in good faith, with a view to the best interests of the investment fund and had reasonable grounds for believing that his or her conduct was lawful.

An investment fund and manager may also purchase and maintain insurance for the benefit of IRC members against any liability incurred by any member in his or her capacity as a member.

Does the IRC have any regular review or reporting obligations?

IRC Review and Assessment

At least annually, the IRC is required to review and assess, at a minimum, each of the following:

(a) its effectiveness as a committee, as well as the effectiveness and contribution of each of its members;

(b) the independence of its members;

(c) the compensation of its members; and

(d) the adequacy and effectiveness of:

   (i) the manager's written policies and procedures;

   (ii) any standing instructions provided to the manager;

   (iii) the manager's and the fund's compliance with any conditions imposed by the IRC in its recommendation or approval; and

   (iv) any subcommittee to which it has delegated any of its functions.

Reporting to the manager

The Instrument requires the IRC to deliver a report to the manger on the results of its assessment of items (b), (c) and (d) above, as soon as practicable following an annual assessment. This report is to include:

(a) a description of any breach by the manager (of which the IRC is aware or that it has reason to believe has occurred) of the following:

   (i) any of the manager's policies or procedures;

   (ii) any condition imposed by the IRC in a recommendation or approval provided to the manager; and

(b) recommendations for any changes the IRC considers should be made to the manager's policies and procedures.

Reporting to securityholders

The IRC is also required to prepare an annual report to securityholders of the fund for each financial year of the fund. This report is to be prepared no later than the date the fund files its annual financial statements and is to describe the IRC and its activities over the financial year, including:

(a) the name of each member of the IRC, along with their length of service on the IRC, the name of all other fund families on whose IRC they serve and if applicable, a description of any relationship that may cause a reasonable person to question the member's independence and the basis upon which the IRC determined that the member is independent;[3]

(b) the percentage of securities of each class or series of voting or equity securities beneficially owned, directly or indirectly, in aggregate, by all the members of the IRC in:

   (i) the investment fund if the aggregate level of ownership exceeds 10 percent;

   (ii) the manager; or

   (iii) any person or company that provides services to the investment fund or the manager;

(c) the identity of the chair of the IRC;

(d) any changes in the composition or membership of the IRC during the period;

(e) the aggregate compensation paid to the IRC and any indemnities paid to members of the IRC by the investment fund during the period;

(f) a description of the process and criteria used by the IRC to determine the appropriate level of compensation of its members and any instance when, in setting the compensation and expenses of its members, the IRC did not follow the recommendation of the manager, including:

   (i) a summary of the manager's recommendation; and

   (ii) the IRC's reasons for not following the recommendation;

(g) if known, a description of each instance when the manager acted in a conflict of interest matter referred to the IRC for which the IRC did not give a positive recommendation, including:

   (i) a summary of the recommendation; and

   (i) if known, the manager's reasons for proceeding without following the recommendation of the IRC and the result of so proceeding;

3 This disclosure is only expected to be provided where a member could reasonably be perceived to not be independent under the Instrument.

(h) if known, a description of each instance when the manager acted in a conflict of interest matter but did not meet a condition imposed by the IRC in its recommendation or approval, including,

   (i) the nature of the condition;

   (ii) if known, the manager's reasons for not meeting the condition; and

   (iii) whether the IRC is of the view that the manager has taken, or proposes to take, appropriate action to deal with the matter; and

(i) a brief summary of any recommendations and approvals the manager relied upon during the period.

In addition to being delivered by the IRC to the manager, the IRC's report to securityholders must be sent by the fund without charge to a securityholder upon request, made available and prominently displayed by the manager on the investment fund's, investment fund family's or manager's website, if any, and filed by the investment fund with applicable securities regulators.

Reporting to Securities Regulatory Authorities

If the IRC is aware of an instance where the manager acted in a conflict of interest matter requiring its approval without complying with a condition imposed by securities legislation (such as obtaining IRC approval) or the IRC in its approval (which includes a condition imposed in a standing instruction), the IRC must notify the fund's principal regulator in writing as soon as practicable.

What are the consequences for breaching a condition imposed by the IRC?

The Commentary states that a breach of a condition imposed by securities legislation or by the IRC in a transaction requiring IRC approval will result in the transaction being made in contravention of securities legislation. In response to this, the securities regulatory authorities may consider taking various actions, including requiring the manager to unwind the transaction and pay any costs associated with doing so.

What records must the IRC maintain?

The IRC must, at a minimum, maintain the following records:

- a copy of its current written charter;
- minutes of material discussions at its meetings;
- copies of any materials and written reports provided to it or prepared by it; and
- written documentation of the decisions it makes.

TRANSITION AND PREPARATION FOR NI 81-107

When does NI 81-107 come into force?

The Instrument is expected to come into force on November 1, 2006. If it does come into force as scheduled, the following chart indicates the key dates for compliance with various aspects under the transition provisions of Section 8.2 of the Instrument.

ACTION	KEY DATES
Full compliance with the Instrument	The earlier of the date the manager provides notice of early compliance or one year after the Instrument comes into force (November 1, 2007).
Appointment of Initial IRC Members	Six months after the Instrument comes into force (May 1, 2007).
IRC's first report to securityholders	120 days after the end of the first financial year of the fund to which the Instrument applies (April 29, 2008 if the fund has a December 31 year end).

While an investment fund does not have to fully comply with the Instrument until November 1, 2007, a fund manager can elect to have the Instrument apply earlier by giving notice to the fund's principal regulator and thereby take advantage of the relief available for certain conflict of interest matters.

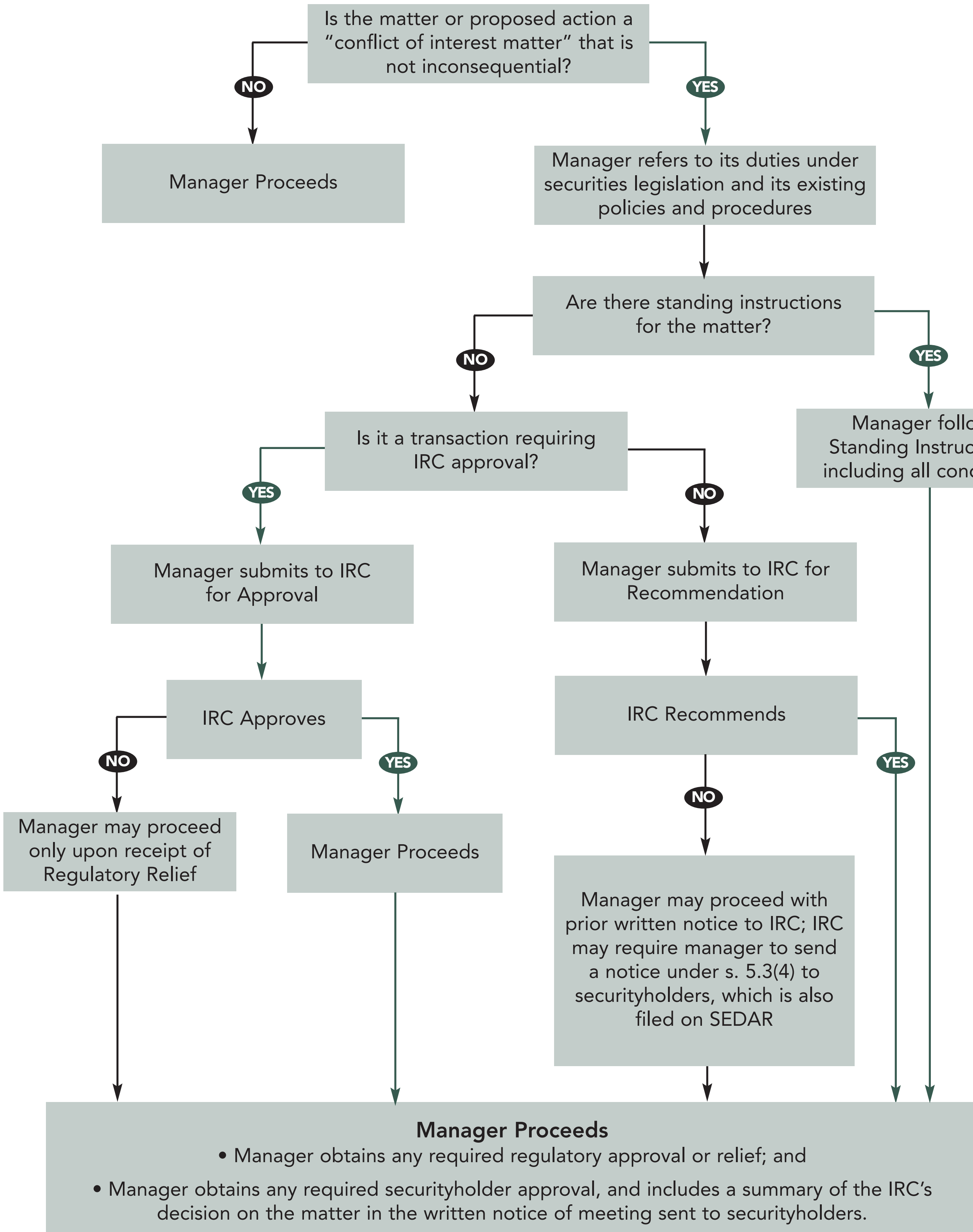
What should we do to prepare?

Depending upon the particular circumstances of a fund or fund manager, there are various decisions to be made and changes to be implemented in order to prepare for NI 81-107. These include a careful review of all new requirements imposed by the Instrument and a consideration of how these will affect existing practices, procedures and documents. Some matters to consider include the following:

- Determining whether the investment fund should volunteer to comply prior to the expiry of the transition period, particularly to take advantage of the relief available for certain conflict of interest matters.
- Reviewing existing operations of the fund and of the manager to determine what conflict of interest matters arise or might arise and need to be addressed.
- Developing policies and procedures for the manager to follow in dealing with conflict of interest matters.
- Ensuring that entities related to the manager have their own policies and procedures in place to address conflicts of interest.
- Determining whether the IRC should be shared among the fund family and what the appropriate composition should be.
- Identifying appropriate candidates for IRC membership and reviewing their competencies and skills alongside the requirements of the fund.
- Determining how fees and expenses associated with the IRC will be paid and determining what internal procedures and policies will need to be amended to reflect these payments.

- Setting appropriate initial compensation and expenses for the IRC.
- Determining whether the IRC should take on any additional responsibilities.
- Determining and implementing appropriate insurance and indemnification for IRC members.
- Reviewing constating documents and agreements to determine what amendments are required to conform to the Instrument and implementing those amendments.
- Reviewing and amending public disclosure to conform to the Instrument.

CONFLICT OF INTEREST REFERENCE CHART



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