BURGUNDY
ASSET MANAGEMENT LTD.

February 28, 2019

DELIVERED VIA EMAIL

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, ON, M5H 3S8
comments@osc.gov.on.ca

Re: OSC Staff Notice 11-784 - *Burden Reduction*

Burgundy Asset Management Ltd. ("Burgundy") is an independent global investment manager providing discretionary investment management for high net worth private clients and institutional clients such as foundations, endowments, pensions and family offices. Burgundy's principal regulator in Canada is the Ontario Securities Commission ("OSC") and Burgundy is registered in all provinces in Canada as a Portfolio Manager. The firm is also registered as an Investment Fund Manager in Ontario, Quebec and Newfoundland & Labrador. In the United States, Burgundy is registered with the U.S. Securities and Exchange Commission ("SEC") under the Investment Advisers Act of 1940.

The OSC issued Staff Notice 11-784 - *Burden Reduction* (the "Notice") on January 14, 2019 for comment on ways to further reduce unnecessary regulatory burden. Burgundy applauds the OSC's efforts to consider market participants' comments while continuing its mandate to provide protection to investors and improve the investor experience.

Below are Burgundy's comments and recommendations with respect to the Notice and that relate to our business.

Improve Access to and Interaction with the OSC

While we appreciate the OSC's efforts over the years to be more transparent and open, to listen and provide opportunities to receive market participants' feedback during registrant outreach sessions, we would find it useful to have increased access to OSC staff in our day to day operations. We suggest the OSC assign a relationship manager to each registrant firm and provide a phone and email directory for registrants' reference should the firm need clarifications on rules and guidance. In our experience of dealing with foreign securities regulators, it has proven helpful if a registrant can clarify certain rules and regulations directly with the regulator.

Outside Business Activities ("OBA")

a. Discontinue OBA Filings

Burgundy was pleased that the 2018 OSC Annual Summary Report[1] clarified that firms are not required to report OBAs for coaching recreational or "house league" sports. We would welcome further clarification on other common outside business activities that are not clear to be conflicts. For example, we believe reporting directorship of one's personal holding company or acting as trustee for one's personal family trust would not be thought of necessarily being a conflict or being in a position of influence. It would also be helpful if the OSC could adopt a similar standard as the SEC for Form ADV Part 2B - if "other business activities represent less than ten (10) percent of the [registrants] time and income, [firms] may presume that they are not substantial".[2]

To help simplify the reporting process and reduce the amount of personal data filed with the OSC, we would encourage the OSC to defer to registrants to decide if an outside business activity involves influence and conflicts of interests given the nature of the firm's business and its clients. Each registrant should maintain an internal record of all outside business activities of their staff and this could be promptly provided to the OSC upon request and during a compliance review.

b. Consider an Annual Reporting Obligation for OBAs

We recommend an annual reporting requirement be considered rather than the current requirement of filing through the National Registration Database within 10 days of the activity. An annual filing of OBAs to the OSC not only provides the regulator a more efficient way to monitor conflicts, but allows year over year trending of such activities, and can eliminate the burden of tracking late filings for registrants. We also believe the late filing penalties are punitive and do not serve any additional investor protection concerns.

c. Extend Deadline for Reporting

Alternatively, should the OSC not agree with our proposals above, we would ask the OSC to consider moving the filing deadline to **30** calendar days from the start of the OBA. For firms with large number of registrants, it is challenging to obtain each employee's private activities daily despite the best effort our firm makes to ensure employees are trained and well aware of their reporting obligations.

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[1] OSC Staff Notice 33-749 Compliance and Registrant Regulation – Annual Summary Report for Dealers, Advisors and Investment Fund Managers

[2] https://www.sec.gov/about/forms/formadv-part2.pdf

Risk Assessment Questionnaire ("RAQ")

Burgundy appreciates the most recent revisions to the 2018 RAQ and applauds the OSC for incorporating industry feedback. The additional time granted for completing the Prospectus-Exempt Fund spreadsheet was welcomed; however, it still takes an enormous amount of work and firm-wide resources to complete this request for all of our funds. We strongly suggest that the OSC consider extending the frequency of the RAQ from every two years to a more risk based approached determined by a firm's registration, type of business and be more fund specific. For example, a firm whose risk score is higher on their previous RAQ submission could be required to complete the questionnaire every two to three years and firms whose risk score is lower or unchanged might be required to complete the form every three to four years provided there are no significant changes to the firm's business model or its funds. If a firm were to change their business model or add new funds, the firm should be required to inform the OSC of this update to determine if the questionnaire should be completed sooner. Another option or in conjunction with the above, to reduce the amount of resources required by firms to fully complete the spreadsheet every two years is to only request updates for funds that have a higher risk level. It is our opinion that funds that do not deal in derivatives, have highly liquid securities and do not have complex financial instruments should be required to update the spreadsheet less frequently than funds that are more complex.

National Registration Database ("NRD")

Although NRD is an initiative of the Canadian Securities Administrators and the Investment Industry Regulatory Organization of Canada, we feel the OSC can play a vital role in updating the system from a technology perspective as well as making the registration process more efficient and user friendly. Some causes of frustration that could be addressed through technology and system updates include:

- Difficulty searching and creating reports on registered advisors and date of when the individual was registered.
- Having to resubmit the registration form in its entirety when filing an application for an existing Associate Advising Representative to be an Advising Representative. Removing the original application leaves no audit trail of previously submitted registration requests.
- Lack of extendable text fields to see and edit the full answer easily.
- No notification from the regulators of when an application has been approved. Firms must log into the system to confirm if an individual has been approved.
- System is not very intuitive or easy to use. It takes a significant amount of time to review the User Guide to understand what needs to be filed where. Even then there is still room for interpretation on how to complete a filing. Also, terminologies used in the system are not in line with general practice. For example, the "Notice" function usually is confused with the "Amendment" function.

- Reporting on outside business activities should not be labeled or considered as current employment. Under the current set-up, a volunteer activity is labeled as current employment despite its shorter term length and the nature of activity. There should be a separate section for this requirement with clear language of what is expected.

NI 24-101 Institutional Trade Matching and Settlement

The current requirement for firms to submit a filing for equity and debt securities when less than 90% of trades are matched, on a volume or market value bases, before T+1 noon is extremely burdensome, time consuming and can be considered unreasonable as outlined below. Burgundy questions how relevant the data is to the OSC considering the equity market as a whole is fairly efficient after moving to T+2 settlement practice and the pace of advancement in digital trading.

Generally speaking, Portfolio Managers and Investment Fund Managers should not be responsible to file the required information. Firms cannot check nor control whether trades are matched T+1 as reliance is dependent on custodians to supply this information. As this report reflects the custodian's efficiency in trade matching, it should be the custodian's responsibility to file accordingly. Additionally, custodians outside of Canada are not subject to Canadian securities laws and often have limited ability to provide trade matching statistics. Our view is firms should not be required to consider trade matching statistics with foreign custodians.

Furthermore, the current rules apply to both equity and debt securities even though the securities are traded and settled very differently. For example, debt securities are often traded when securities are issued and new issues usually take much longer to match and settle. This alone can cause fixed income trade matching statistics to almost always be under the 90% threshold. There is also much less market transparency with debt securities and not meeting the 90% threshold is considered the norm. There seems to be very little value to report debt securities that do not meet the 90% requirement quarterly and causes an unnecessary burden to reporting firms.

Burgundy respectfully challenges the reasons behind requiring information under NI 24-101 and urges the OSC to consider removing the trade requirement in its entirety. If removing this requirement in full is not possible, we strongly recommend removing the requirement for debt securities or at least lowering the reporting threshold for the reasons mentioned above.

Account Statements and Client Reporting

Burgundy supports the efforts and measures taken to provide full transparency on charges, compensation and investment performance reports that are easily understood by clients (CRM 2 Reporting). Although attempts have been made to refine the reporting obligations to clients, we believe

a few minor changes discussed below would satisfy client requests and ease the burden and cost on Portfolio Managers and Investment Fund Managers.

a. Permitted Client Exemption

Burgundy provides investment services to permitted institutions, permitted individuals and non-permitted individuals. Currently National Instrument ("NI") 31-103 has several carve-outs for "permitted clients that are not individuals". Burgundy questions the reasoning behind providing such limitation on the exemption and requests that this exemption be available to all permitted clients including those permitted clients that are individuals**.** Our view is that as long as a client meets the permitted client definition, the protection should be the same regardless of its legal structure.

b. Reporting Using Text, Tables and Charts

Subsection 14.19(5) of NI 31-103 requires firms to use text, tables and charts in the presentation of investment performance reports. Burgundy questions the importance and relevance of the requirement to present text, tables and charts when only a simple table would suffice. While graphs could be an effective addition to relate money-weighted rates of return information to clients, a mandate to include graphic illustrations does not necessarily add value to the client experience. It is our view that some information is best presented and understood in a table of data and we request the OSC to consider allowing firms the choice and flexibility to determine how to best represent investment performance to their clients. So long as the prescribe content is included, how the information is displayed should be left up to the registrant to determine.

Client Relationships – Know Your Client and Suitability

Burgundy understands and agrees that know your client ("KYC") information forms the basis for determining whether securities are suitable for investors and helps protect the client, the registrant and the integrity of the capital markets. As currently written, Part 13 of NI 31-103 clearly outlines a registrant's duties in dealing with clients and allows firms to develop their own process to take reasonable steps to obtain and periodically update clients' KYC information.

The concerns we have are not with the rules themselves, rather how the rules have been interpreted and enforced. For example, firms have been given significant deficiencies for not collecting KYC information on a yearly basis from every client even if the firm has shown efforts to collect such data. We can appreciate the OSC setting goalposts of annual updates through staff notices to provide more clarity under subsection 13.2(4) of NI 31-103 where a "discretionary authority should update its clients' KYC information frequently"; however, regulators should allow firms to tailor their "reasonable steps to ensure it has sufficient information regarding information" under subsection 13.2(2) to their business model and type of clients.

Burgundy prides itself to know its clients extremely well and frequent updates and communication is the corner stone to exceptional service. Through regular investment review meetings, quarterly and annual account statements, client day events, blog posts, publications like the View from Burgundy, Women of Burgundy events and ad hoc client conference calls, clients feel well informed and have built a meaningful relationship with their Investment Counsellor. For some or all these reasons, there are a limited number of clients who do not feel the need to meet with their Investment Counsellor on an annual basis to review or fill out forms on KYC information, especially when there have been no material changes to their investment circumstances.

Other clients prefer not to review their portfolio on annual basis because they are long-term investors, do not have nor want changes to their asset mix, understand they have access to their Investment Counsellor at all times, track their performance and account transactions through quarterly statements, only have a small investment at Burgundy relative to their overall financial position, and/or are comfortable with our investment philosophy of value investing and our team.

In our experience, investors criticize firms as wanting too much personal information (asking for outside or current investment holdings is a constant pain point) for investing their assets because they do not understand how different firms are registered. An investor who has had assets at an IIROC dealer firm questions why Burgundy needs additional information that the client may feel is an invasion of privacy. Burgundy informs these clients of the different requirements and that as a portfolio manager with discretionary authority Burgundy is obligated to ask extensive KYC information[3]. To help these efforts the OSC should consider spending more time in educating investors on their role as investors, including awareness of the different registrant types and the prescribed requirements. The regulators could play a more proactive role in explaining the role of the client and the importance of updating their investment managers on their financial circumstances.

It should also be recognized that our clients not only have to complete copious amounts of paperwork prescribed from securities legislation, but also complete required paperwork for privacy, anti-money laundering, Canada's Anti-Spam Law, and various domestic and international tax regulations. In the last five to ten years, these requirements have likely tripled the amount of paperwork involved in the client onboarding process.

Given the different business models and client types for firms, Burgundy strongly believes that as a fiduciary with a high net worth client base we should be able to ask and discuss KYC information that is relevant to our clients' needs and clients should have the right to opt out of annual KYC updates. What consists of a material change to one client's circumstances is not necessarily material for every client. To be clear, we are not suggesting that clients would not be sent reminders or notifications to update their

[3] Companion Policy 31-103 CP Registration Requirements, Exemptions and Ongoing Registrant Obligations, subsection 13.3

KYC information on file, as this would be done in the normal course. Rather, we would suggest that the OSC not mandate annual updates in all circumstances for all clients.

We will not reiterate all the comments previously provided for the Client Focused Reforms4 in this letter in regards to KYC and suitability, but will stress that moving in the direction of the proposed amendments outlined in the Client Focused Reforms would only complicate the requirements further, be extremely burdensome on firms and cause further uncertainty for investors without any real benefit to clients. We believe the proposed amendments relating to KYC and suitability should be reconsidered.

Disclosure by an Eligible Institutional Investor ("EII") under Part 4 of NI 62-103

We believe the current threshold reporting requirement under section 4.5 of NI 62-103, specifically the -/+2.5% filing trigger for holdings over 10% creates a high volume of filings without providing a proven corresponding benefit to the market. To decrease the volume of filings, Burgundy suggests bringing the reporting threshold requirements more in line with the U.S. 13G standard[5], whereby the monthly filing threshold is 10% and increases /decreases of 5% are required. Our view is that this standard provides sufficient information to the public about holding information, yet strikes an appropriate balance between timely disclosure and protecting a firm's proprietary investing strategy. This would also be in line with the policy rationale for having an alternative monthly reporting system for EIIs. We also believe alignment with the U.S. rules creates more consistency for global investment managers. Flooding the market with trade reports of relatively immaterial changes in investment positions will not in many cases necessarily provide greater transparency. We believe a review and analysis of 13G filings would be useful to determine appropriateness if applied in a Canadian context.

We have two other minor suggestions for Form 62-103F3. First, we question the purpose of asking for the date of the transaction that triggered the requirement to file the report (question 2.2) since the filing is completed on a monthly basis. It is not uncommon to trigger the filing threshold more than once during the month due to frequent market movement. Our suggestion is either to remove this part of the question or clarify if the question is asking for the date of the first trigger.

Second, the format of Form 62-103F3 is lengthy and should be revised to a table format and condensed to a maximum of two pages. A table format provides information in a more concise format while displaying the relevant information in a more user friendly format with the same outcome for disclosure. Many foreign jurisdictions adopt this format, such as UK, Japan, and Germany.

More Efficient Disclosure of Current Rules and Regulations

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[4] Client Focused Reforms - Proposed Amendments to National Instrument 31-103 and Companion Policy NI 31-103CP

[5] §240.13d-1 Filing of Schedules 13D and 13G

The "Instruments, Rules & Policies" section on the OSC website has been a very useful resource for registrants. However, it is often difficult to locate the most recent consolidated version of an instrument and it becomes challenging when multiple amendments have been made after the last unofficial consolidated version. We recommend the OSC revisit how it displays its instruments, rules and policies to ensure that the most recent versions of its rules are easily accessible on the website.

We also recommend any references to deadlines in the regulations be more specific about calendar days vs. business days as this can be confusing at times.

Harmonization of Regulations

In general, we appreciate the OSC's efforts in seeking to harmonize rules with other jurisdictions in Canada. To the extent possible, it would be useful if regulators could work with their international counterparts toward securities law harmonization. In this regard, we applaud the work undertaken by IOSCO. Many Canadian registrants are dually registered with the SEC and could benefit from harmonization with SEC requirements. Similarly, for Canadian registrants conducting business in the UK, European regulations such as MiFID II, have had a big impact on a firm's compliance program. This layering of securities regulations creates a barrier for firms to be truly global. More coordination among international securities regulators could help firms reduce the regulatory burden on their business and elevate requirements to a consistent international best standard.

Conclusion

In summary, Burgundy supports the OSC's objective of reducing the regulatory burden for registrant firms. We appreciate the opportunity to participate in the request for comments set out in the Notice. If you have any questions regarding the comments set out above and/or any of our recommendations, please do not hesitate to contact us. We look forward to participating in the roundtable discussion on March 27, 2019.

Sincerely,

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