Citibank Canada Investment Funds Limited
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August 8, 2022

Alberta Securities Commission Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Ontario Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal affairs
Autorité des marchés financiers
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Delivered by e-mail: consultation-en-cours@lautorite.qc.ca

Grace Knakowski
Secretary Ontario Securities Commission
20 Queen Street West 22nd Floor Toronto, Ontario M5H 3S8
Delivered by e-mail: comments@osc.gov.on.ca

Dear Sirs/Mesdames:

RE: CSA and CCIR Joint Notice and Request for Comment – Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and to Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations and Proposed CCIR Individual Variable Insurance Contract Ongoing Disclosure Guidance – Total Cost Reporting for Investment Funds and Segregated Funds (collectively the "Notice")

This comment letter is submitted on behalf of Citibank Canada Investment Funds Limited ("**CCIFL**", "**we**" or "**us**") to provide our comments to you on the legislative proposals referred to above.

About CCIFL

CCIFL is a wholly owned subsidiary of Citibank Canada, a Canadian chartered bank, which is in turn an indirect subsidiary of Citigroup, Inc. CCIFL is a registered portfolio manager and exempt market dealer in eight of the provinces of Canada, and a registered mutual fund dealer in Ontario and British Columbia. CCIFL sells securities of pooled investment funds to institutional and high net worth individual clients of Citibank Canada on a private placement basis and through accounts managed by CCIFL under the terms of an investment management agreement.

Comments

We are writing in response to the Notice and appreciate the opportunity to share our views on the proposed amendments ("**Proposed Amendments**") to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**") set out therein. We are particularly appreciative of your willingness to consider this comment letter, notwithstanding that it is being submitted after the expiry of the comment period. Our comments are focused on the investment funds aspect of the Notice. We do not have any comments on the segregated funds aspects as we do not offer this product to our clients.

Our overarching comment is that the new requirements proposed in the Notice should not apply in respect of securities of non-Canadian investment funds that are distributed on a prospectus exempt basis to, and held in accounts for, permitted clients, including individual permitted clients that satisfy the threshold set out in clause (o) of the definition of a "permitted client", i.e., "an individual who beneficially owns financial assets … having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $5 million." For convenience, in this letter we will refer to such securities as "**Exempt Foreign Fund Securities.**"

The requirements to include fund expense, fund expense ratio and direct investment fund charges information on account statements and reports provided by registrants should not be imposed for Exempt Foreign Fund Securities. It is fundamentally inconsistent with the regime under which Exempt Foreign Fund Securities are typically distributed in Canada, and registrants, such as CCIFL, generally will not have access to the information required to reliably provide this information.

Exempt Foreign Fund Securities are, in our experience, more usually distributed to Canadian permitted clients by non-Canadian market participants that are not generally subject to NI 31-103 (or Canadian securities legislation more generally) and would not be impacted by the Proposed Amendments.

Non-Canadian dealers routinely distribute Exempt Foreign Fund Securities to Canadian permitted clients (including individual permitted clients) under the "international dealer" exemption in section 8.18 of NI 31-103. Non-Canadian portfolio managers routinely advise Canadian permitted clients (including individual permitted clients) in respect of Exempt Foreign Fund Securities under the "international adviser" and "international sub-adviser" exemptions in sections 8.26 and 8.26.1 of NI 31-103, respectively. Securities of investment funds sponsored by non-Canadian investment fund managers are permitted to be distributed to permitted clients (including individual permitted clients) in Ontario, Quebec and Newfoundland and Labrador, provided that the investment fund manager complies with the registration exemption set out in Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers*. Finally, the "wrapper exemptions" from Canadian private placement disclosure requirements relating to underwriter conflicts of interest and statutory rights of action generally would be available for a distribution of

Exempt Foreign Fund Securities to Canadian permitted clients (including individual permitted clients).

This is the regime that non-Canadian dealers and fund managers are subject to in respect of Exempt Foreign Fund Securities. It does not include any requirement to provide "fund expense", "fund expense ratio" or "direct investment fund charges" information on account statements or in similar documents. Indeed, our discussions with our non-Canadian affiliates that distribute alternative funds (private equity funds, hedge funds, real estate funds, multi-strategy funds, etc.) globally (including, in some cases, to Canadians) indicate that such foreign affiliates are not required under their home jurisdiction rules to provide this information or anything similar to clients on account statements.

Requiring these additional disclosures will, therefore, put registered Canadian firms, such as CCIFL, at a disadvantage to their non-Canadian competitors that can provide the same products to Canadian permitted clients without incurring any similar regulatory obligation to provide the client reporting information that will be mandated by the Proposed Amendments.

The other important consideration is that the information required by the Proposed Amendments generally will not be easily or reliably available for Exempt Foreign Fund Securities. Issuers of Exempt Foreign Fund Securities generally will not, in our experience, voluntarily provide any information that they are not required to in order to comply with the regulatory requirements of their home jurisdiction or certain larger capital markets jurisdictions (e.g., the U.S., Europe, etc.).

The changes to NI 31-103's companion policy included in the Proposed Amendments suggest the following options for registrants that are not able to obtain "fund expense", "fund expense ratio" and "direct investment fund charge" information from the investment fund manager:

"*… the registered firm must make reasonable efforts to obtain information about the investment fund's fund expenses, fund expense ratio or direct investment fund charges by other means. Those other means may include:*

- *relying on information disclosed in disclosure documents of the investment fund other than [Canadian public disclosure documents], including documents prepared according to the reporting requirements applicable in a foreign jurisdiction,*

- *requesting that the information be provided in writing by the investment fund or investment fund manager, or*

- *relying on information reported by a reliable third-party service provider.*

We expect registered firms to use their professional judgement in determining what other means of obtaining the information would be appropriate, notably taking into account that doing so must not cause the information reported to clients to be misleading."

We do not expect that we generally will be able to rely on information included in foreign disclosure documents. Indeed, our experience is that such information is not included in foreign offering documents or other foreign fund materials. We similarly do not expect that non-Canadian investment fund managers or third-party service providers will provide the required information.

Accordingly, it is our firm expectation that, if the Proposed Amendments are enacted as proposed, CCIFL will be required to undertake a significant, ongoing diligence exercise that, in a significant

majority of cases, will simply result in a determination that it cannot reliably provide fund expense, fund expense ratio and direct investment fund charges information for an Exempt Foreign Fund Security, and must therefore provide disclosure to its clients that such information is excluded from the relevant statement/report.

We respectfully submit that it would be out of keeping with the securities regulators' recent burden reduction initiatives to impose a regulatory burden such as this on a Canadian business, especially when the resulting benefit is unclear (at best), and the class of Canadian investors being protected in respect of Exempt Foreign Fund Securities – "permitted clients" – are assumed by other areas of the Canadian securities regulatory framework to be sophisticated and financially literate enough to understand the risks, rewards and structures (including cost structures) of the alternative investment vehicles that they invest in, and to ask questions where they deem it necessary.

Comments on Existing Requirements

We would also like to take this opportunity to provide comments on certain of NI 31-103's existing client reporting requirements. Specifically, sections 14.14.2 [*Security position cost information*] and 14.18 [*Investment performance report*].

Our experience working with these provisions is that, given the nature of the securities our clients' investments – privately distributed interests in alternative investment vehicles with relatively detailed capital call, carry, redemption and distribution provisions - compliance with section 14.14.2 and section 14.18 is costly and labor-intensive, and provides reporting that, we understand, generally is not useful to our clients. The cost/burden associated with this reporting is partly a result of Citi's global affiliates (whose systems and expertise we leverage in order to provide our Canadian private banking platform) not being required to provide, and not providing, similar reporting to clients in their home jurisdictions.

In light of this, we would like the CSA to consider adding waiver provisions to sections 14.14.2 and 14.18, such that permitted clients (including individual permitted clients) may waive, in writing, a registered firm's compliance with these sections. This approach is appropriate given the sophistication and relative negotiating power of our client base (permitted clients) and will allow us, and other similarly situated registrants, to properly tailor the reporting our clients receive to the nature of their investments (privately distributed alternative investment vehicles) and our existing global client reporting structures.

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CCIFL appreciates the opportunity to submit these comments to the CSA. If CSA staff has any questions concerning the matters discussed in this letter, please contact Robert McGuire, Chief Executive Officer, at (416) 947-4147 or robertjmcguire@citi.com.

Yours truly,

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Robert J. McGuire
Chief Executive Officer