

December 18, 2002

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Securities Commission  
Manitoba Securities Commission  
Ontario Securities Commission  
Securities Administration Branch, New Brunswick  
Office of the Attorney General, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland and Labrador  
Registrar of Securities, Department of Justice, Government of the Northwest Territories  
Registrar of Securities, Government of Yukon  
Registrar of Securities, Legal Registries Division, Department of Justice,  
Government of Nunavut

c/o John Stevenson  
Ontario Securities Commission  
20 Queen Street West  
19<sup>th</sup> Floor, Box 55  
Toronto, Ontario M5H 3S8

- and -

Denise Brosseau, Secretary  
Commission des valeurs mobilières du Québec  
800 Victoria Square, Stock Exchange Tower  
P.O. Box 246, 22<sup>nd</sup> Floor  
Montreal, Québec H4Z 1G3

**Via E-mail**

***Re: Proposed National Instrument 81-106 – Investment Fund Continuous Disclosure***

BMO Nesbitt Burns Inc. (“BMO NBI”), as the manager of the BMO Nesbitt Burns Group of Funds, is pleased to provide submissions to the Canadian Securities Administrators (“CSA”) on proposed National Instrument 81-106, *Investment Fund Continuous Disclosure* (“NI 81-106”).

BMO NBI welcomes many of the concepts raised in NI 81-106, such as reducing delivery obligations that will result in cost savings that will accrue to mutual funds. We also support the submissions of The Investment Funds Institute of Canada (“IFIC”) to the CSA on NI 81-106 on behalf of the fund industry and appreciate IFIC’s efforts in preparing an industry response. In addition to the industry comments submitted by IFIC, we are providing additional submissions that are of particular interest to BMO NBI. These submissions respond to the specific questions raised by the CSA in the September 20, 2002 Request for Comments.

### ***Management Reports of Fund Performance***

*CSA Question 1: The CSA invite comments as to whether the quarterly management reports of fund performance will achieve the goals that they are intended to achieve. Should there be more or less frequent disclosure of fund performance information and why? Should there be quarterly reporting for all investment funds? Does the proposed type of information allow an investor or an adviser to make informed investment decisions?*

#### **Direct costs associated with quarterly management reporting of fund performance**

The net benefit to investors should be the primary consideration in assessing the overall utility of instituting a quarterly reporting requirement. The costs and non-monetary implications of the proposal must be weighed against the actual or perceived benefits that might be obtained from its implementation.

Cost consequences in our industry are a significant consideration as mounting regulatory cost burdens are invariably borne by the investor in the form of increased expenses charged to the funds themselves. Quarterly reports, as proposed, will require significant additional expenditures to prepare. This is due to the fact that preparation and distribution will involve significant additional time and resources on the part of the following groups involved in the process: portfolio managers; marketing (layout); accounting; legal; translation; printing and delivery. This is in addition to costs relating to aggregating fund proxy-voting information, and from implementing the proposed changes in financial reporting.

These new costs are significant and we believe will, in aggregate, exceed any savings that will accrue from allowing investors to opt-in for the receipt of a fund’s financial statements/management reports. All investors will be subject to these additional costs,

although only a small subset are likely to request and review the additional information required by these reports.

### **Frequency and nature of disclosure issues**

We agree with the comments that IFIC has provided to the CSA respecting the potential that: (i) more frequent disclosure may lead to an inappropriate short-term focus for many funds, and (ii) disclosure of portfolio holdings may generate abusive or opportunistic practices. While we believe investors should have access to and understand what funds invest in, we are also of the view that the frequency and nature of the proposed quarterly reporting may encourage investors to adopt a 'market timing' approach, as opposed to a prudent long-term investment strategy. Similarly, the requirement to provide separately bound reports for each individual fund as part of such quarterly reports presumes investors should look at funds in isolation in formulating their investment decisions, which is not advisable in many situations.

### **Assessing the appropriate level of prescribed disclosure**

We have come to the understanding in dealing with our clients that more disclosure is not necessarily better. In our view it is more important to improve the quality of information that is currently required to be disclosed rather than prescribe an increase in the quantity and frequency of what might, at best, be only marginally useful data. BMO NBI presently provides clients with important information respecting their investments, information that we have come to understand is useful to our clients and that is provided on more frequent basis than as proposed under NI 81-106. As a result, we do not believe there is a need to regulate the information we provide to clients on a more timely basis than is already prescribed.

We are of the view that there is significant investor disinterest with the existing frequency and level of information presently available. We do not believe there is a real desire or need for additional and more frequent disclosure. It is our view that existing disclosure and sources of information provide interested customers with access to most information desired by them, and additional information is often provided on specific request to interested investors. From our perspective, the current regulatory framework coupled with the access-

based information provided on publicly available sources best serves the actual needs of our unit-holders.

In particular, we have strong reservations about providing forward looking information as required under section 1.6 of Part B of Form 81-106F1. For many funds, meaningful forward-looking commentary is next to impossible and will likely be of limited value to investors. It presumes a foresight of events that can not easily be predicted, such as what markets will do in the next quarter. While many economists and analysts review and prepare information on where markets may go and why, such information is not easily explained to the average investor in plain english, and may change significantly based on rapid and unforeseen changes in economic, social, political and other factors. Significant events could occur between printing and delivery that could render such forward-looking commentary inaccurate or misleading to investors. The drafting and inclusion of a meaningful but not misleading quarterly statement of forward-looking commentary will also require careful review and analysis from a legal perspective and will give rise to additional costs relating to their preparation.

### **Proxy voting**

Section 1.2(h) of Part B of Form 81-106F1 requires disclosure in the Annual Management Report of Fund Performance of “how the portfolio advisers or the manager of the investment fund voted on matters relating to issuers of portfolio assets of the investment fund, other than routine business of those issuers” (the “Proxy Disclosure Language”). While we recognize the importance of ethical and responsible proxy voting, we do not believe that a portfolio manager’s record of voting on specific proxies is widely desired by Canadian mutual fund investors or is meaningful in assisting them to make buy, hold or sell decisions with respect to their mutual fund investments.

In addition, it is important to note that there will be significant costs and logistical challenges associated with tracking and compiling proxy voting information, especially where a fund is managed by a number of different external managers. These costs could also be compounded by over-reporting due to the vagueness of the disclosure requirement contained in the Proxy Disclosure Language.

Accordingly, we are of the view that it would be more relevant and meaningful for portfolio advisers of funds to have a proxy-voting policy, which they would be required to adhere to and disclose to investors. Such a policy should explain the proxy-voting procedures of each portfolio adviser, and may explain each portfolio adviser's approach to general issues such as takeover protection or shareholder rights.

### ***Financial statements***

***CSA Question 2:*** *The CSA invite comment on whether the financial statement requirements set out in the proposed Rule meet the needs of the users of the financial statements? Does the amount of detail provided in the proposed National Instrument assist with the preparation, consistency and comparability of the financial statements? Is the proposed National Instrument too detailed? Is more detail or specific direction necessary? The majority of investment funds currently prepare and file six- month interim financial statements. Should all investment funds to be required to prepare and file quarterly financial statements in addition to the proposed quarterly management reports of fund performance?*

BMO NBI agrees with the comments of IFIC respecting the proposed shortening of timelines and increased frequency for filing of financial statements. We strongly recommend that the existing deadlines for filing both interim and annual financial statements be preserved. It will be extremely difficult to meet the 45 day and 90 day deadlines for preparing the interim and annual financial statements, respectively.

Preparing financial statements is time intensive and involves the coordination of efforts of various internal departments and external consultants and service providers, including translation and printing, in addition to the time required for the submission and presentation of financial statements to our board of trustees for review and approval. Organizing this process to occur within these shortened timelines would be extremely difficult.

It should also be noted that that many mutual funds have the same year-end and that there is a limited number of experienced mutual fund auditors. The proposed shortened deadlines for annual and interim financial statements will make it more difficult to retain experienced auditors who are able to provide their services within the proposed timeframes. This in turn may cause a significant increase in the cost of auditing.

We agree with IFIC's comments regarding the proposed additional line items and investment portfolio disclosure. While we recognize the importance of making available useful financial

information to investors, we do not believe that the proposed additional information will provide investors with information that is material to making informed investment decisions. As the prescriptive information required to be provided by NI 81-106 will not necessarily provide useful information to customers, we recommend that information only be prescribed in accordance with Generally Accepted Accounting Principles. In addition, we would re-iterate IFIC's comments that there is significant unnecessary duplication between the proposed disclosure in the financial statements and the management reports of fund performance.

We also note that financial statements are not generally used by investors in making informed investment decisions. Accordingly, there is no compelling reason to shorten the time periods for the preparation of these documents, especially in light of the difficulties and challenges this would create, as noted above. We therefore urge the CSA to avoid shortening filing deadlines simply for the sake of disseminating information more quickly.

***Disclosure of risk and volatility***

***CSA Question 3:*** *The CSA invite comments on whether alternative methods of disclosing risk and volatility should be used. For example, should there be disclosure of the fund's best and worst quarter returns or disclosure of the correlation of the fund to a benchmark index? Is there additional disclosure that would provide useful information to the investors and advisers?*

We agree with the comments of IFIC in their submission to the CSA on NI 81-106 respecting the disclosure of risk and volatility. The disclosure of best and worst quarter returns promotes inappropriate bias towards short-term performance and would not be appropriate nor would it provide investors with meaningful information. Furthermore, there is no industry convention or established consensus of what risk and volatility are or how to measure them. We are satisfied that the current disclosure contained in a simplified prospectus is appropriate as it discusses the types of risk that a fund may be exposed to and the corresponding types of investors that such fund may be a suitable investment for.

***Further information***

BMO NBI believes that a public discussion of the improvements required to the securities regulatory system is essential in order to keep our capital markets healthy and competitive. We appreciate the opportunity to comment and hope that our comments are well received.

Yours truly,

**BMO Nesbitt Burns Inc.**

A handwritten signature in black ink, appearing to read 'C. Stefankiewicz', with a long horizontal flourish extending to the right.

Connie Stefankiewicz

Senior Vice-President and Managing Director