

April 5, 2004

John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West  
19<sup>th</sup> floor, Box 55  
Toronto, ON, M5H 3S8  
Telephone: 416-593-8145  
Fax: 416-593-2318  
e-mail: [jstevenson@osc.gov.on.ca](mailto:jstevenson@osc.gov.on.ca)

and

Denise Brousseau, 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  
Telephone: 514-940-2150  
Fax: 514-864-6381  
e-mail: [consultation-en-cours@cvmq.com](mailto:consultation-en-cours@cvmq.com)

**Re: Canadian Securities Administrators ("CSA") Proposed National Instrument 81-107 *Independent Review Committee for Mutual Funds* ("IRC")**

Brandes Investment Partners & Co. is a limited market dealer, investment counsel & portfolio manager in Ontario and a mutual fund manager in all jurisdictions in Canada. Our primary function is that of a mutual fund manager. Brandes currently markets our funds exclusively through registered dealers or to accredited investors. Brandes employs a largely outsourced structure, and have entered into contractual relationships with third parties to provide custody, processing, valuation and portfolio management services. We are writing to provide you with our comments on the proposed National Instrument 81-107 ("NI 81-107").

Brandes supports appropriate measures to provide greater protection to investors in our funds. We understand that we have a fiduciary responsibility to our unitholders and take this responsibility very seriously. We have developed governance and oversight practices that allow us to manage these responsibilities. We also understand that if we fail to act in accordance with our responsibilities we face having both regulatory and investor-confidence issues which will lead to investors choosing to place their investments elsewhere.

In reviewing the draft legislation and formulating our opinions we have given thought to the impact that the proposed legislation would have on investors in smaller funds such as ours and have considered these three questions:

- Will an investor in smaller, outsourced funds like the Brandes Funds be better served by having an IRC as outlined in proposed NI 81-107?
- If there is no substantial benefit, why would we ask investors to incur additional expenses?
- Are there other alternatives that could be considered which would provide a similar benefit to investors at a lower cost?

As is the case with many fund managers, we sell our funds primarily through financial intermediaries who themselves are regulated and have a duty of care to ensure that the funds that they recommend are appropriate for their client. If we as a manager were to act unreasonably when faced with a conflict situation, we could reasonably expect that advisors would eventually stop recommending our funds.

With the exception of our money market fund, all of our funds are managed under a sub- advisory relationship by our affiliate based in San Diego. As an investment manager operating in the USA, Brandes Investment Partners, LLC also has a fiduciary responsibility to the investors and entities that have money invested with them. They also operate in one of the most heavily regulated jurisdictions in the world.

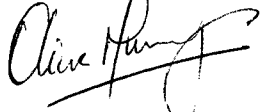
When you consider all of this, it's hard to conclude that investors in funds structured like the Brandes Funds would be better off as a result of having an IRC. For these reasons we believe that the development of an IRC as contemplated by NI 81-107 is not appropriate and reasonable under the circumstances.

In addition, we strongly believe that NI 81-107 as currently proposed will be anti-competitive. The cost for smaller firms will be prohibitive and will cause their expense ratios to increase. More importantly, why must the investing public who invest in mutual funds bear the cost of the IRC when there is no IRC requirement for insurance company segregated funds, separately managed accounts or pooled funds. If the CSA believes that the IRC as defined in the draft NI 81-107 is necessary to protect investors then surely the same protection should be afforded investors in all similar product constructs.

An alternative to NI 81-107 would be to require all investment companies such as Brandes to have an independent professional firm (such as an audit or law firm) certify that appropriate policies exist within the company. Management would be required to certify on an annual basis that they have followed these policies and disclose situations where the policy was not followed. The regulator could

expand its audit tests to review adherence to these stated policies during its periodic audits of these firms. We believe the costs would be dramatically lower and protection for the clients would be no different that which the IRC could provide.

Yours truly,

A handwritten signature in black ink, appearing to read "Oliver Murray". The signature is stylized with a large, sweeping flourish at the end.

Oliver Murray  
President & CEO