August 21, 2013

John Stevenson
Secretary
Ontario Securities Commission
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Dear Mr. Stevenson:

Re: CSA Notice and Request for Comments regarding proposed amendments to National Instrument 81-102 *Mutual Funds* ("NI 81-102") and Related Consequential Amendments under Modernization of Investment Fund Product Regulation (Phase 2)

Thank you for the opportunity to comment on the proposed amendments.

We submit the following comments in response to the Notice and Request for Comments published by the Canadian Securities Administrators (the "**CSA**") on March 27, 2013 with respect to proposed amendments to NI 81-102 and the related consequential amendments.

The Closed End Fund (CEF) business in Canada is an innovative $30 billion industry and is a vibrant part of the Canadian Capital markets. It represents over 10% of the new equity issuances and 70% of new TSX listings. Through my personal career of close to 30 years I have not associated the CEF markets with Mutual Funds, though both are investment management products, there are distinct differences between the two. We believe folding CEFs into a mutual fund framework will stifle innovation and possibly eliminate a number of companies that have chosen to deliver investors unique, income generating investment alternatives

The notice for comments addressed a number of issues and we are aware that syndicate members, legal firms and service providers to the industry have provided extensive review of the issues. In our response we have specifically and respectively addressed the points which we feel represent the business and the Investment Funds offered by Harvest Portfolios Group Inc.

1. **Leverage (Borrowing):**
The CSA is suggesting leverage used by "non-redeemable" closed-end funds be restricted to a maximum of 30% of NAV and that lenders be restricted to Canadian financial institutions.

Harvest Position:
Leverage is considered a tool of structuring that Harvest has found effective in the development of products specifically to enhance income generation. We believe the inclusion of this tool is in fact one of the reasons investors select closed end funds over regular open-end funds. In most cases leverage will not exceed 30% but from time to time will be higher due to any number of reasons, some examples would include the geographical diversification of the fund, amount of allowable margin or leverage per security, yield opportunities on a specific security or currency hedging margin requirements. The disclosure in the fund prospectus has specific language that clearly states the maximum allowable leverage levels and use of leverage. We believe that leverage levels beyond 30% should be allowable as long as clearly stated in the prospectus as to the maximum amount and purpose of the leverage.

With regard to Canadian financial institutions, while we currently use Canadian lenders, we have been approached by major foreign lenders who seem to be eager to lend to Canadian funds at very competitive prices. In fact as a result of an offer from an American lender, we were able to negotiate more favorable terms for one of our funds from a Canadian lender. We believe that lenders should be regulated and recognized Financial Institutions but not limited to Canadian Institutions.

2. **Organizational Costs**
The CSA proposes that the costs associated with the establishment of a new closed-end fund be borne by the fund company creating and launching the fund rather than being borne by the fund itself.

Harvest Position:
We believe it is appropriate that the costs associated with organizing and launching a closed-end fund be borne by the fund itself with the preponderance of the costs being but not limited to, Legal, Audit, Regulator, Listing fees and Printing costs. . While the CSA may have a desire to "level the playing field" with respect to pricing, closed-end funds are sufficiently different from open-end funds to warrant a pricing differential. Specifically regarding the "marketing" costs, unlike open-end funds that have by definition unlimited time to raise assets in the fund, closed-end funds have a very limited window of time, usually six weeks, to raise sufficient capital. It is to the benefit of the

Unitholders that as much capital as possible be raised during that six weeks so that there is a great enough asset base for the investment strategy to be fully implemented.

We believe that if implemented, the proposed change would either reduce the quantity and variety of product offerings by eliminating companies from this space due to the increased cost of creating and launching new funds or (and more likely) result in higher costs to Unitholders through increased or new DSC type charges.

3. Grandfathering "Transitioning Period":

The CSA proposes an 18 month time period in which all existing closed-end funds would have to come into compliance with any and all new regulations.

Harvest Position:

While we have become accustomed to working in an ever changing environment and incorporating new regulations as we develop new products, we strenuously disagree with the concept of applying new regulations retroactively to existing closed-end funds for two reasons;

a) A fund's investment objectives and how it is obtained is based upon the rules at the time the fund was created and launched. Investors have purchased the fund based on those objectives. If all of the new regulations suggested in the CSA "Modernization Amendments" discussion paper were imposed and made retroactive, it would have an extremely negative impact on the Industry the existing products and the integrity of a Prospectus.

b) Secondly, we philosophically disagree with the idea of retroactively taking away a valuable benefit which a Canadian citizen (the Unitholder) has legally purchased based on what we have outlined in (a) and recommended by a licensed representative of the Industry.

4. Conversion

While not highlighted as an issue, the CSA seems to be suggesting that either closed-end funds should not be able to convert to open-end or, that if they do, the fund company should reimburse some or all of the organizational costs which were paid by the fund.

Harvest Position:

We agree that full and plain disclosure is the best way to deal with many of the suggestions in the discussion paper. Specifically a closed-end fund which is structured from inception to convert to an open-end fund upon the occurrence of a

specified event or date, should be permitted to do so if it specifically provided full and plain disclosure of this feature in its Prospectus.
The Industry as a whole has not adopted the mutual fund conversion model, though some firms have done so. We believe that the Regulator should establish more literal conditions for timing and cost structures around funds that convert from Closed end Funds to Open End Funds.

5. Costs for Approval of Fundamental Changes

We would like to make a comment about the allocation of costs related to making fundament changes to a fund.

Harvest Position:
We believe, that if a fundamental change to a fund is being mandated by a Regulator or proposed by the IFM, if such change to a fund is undertaken for the benefit of the Unitholder, the costs related to making the change should be borne directly by the fund.

For example, as stated above, we strongly urge that any new rules (if adopted) not be applied retroactively. However, if the CSA does deem that certain changes are required and chooses not to grandfather existing CEFs, the costs associated with the changes should be borne by the fund(s) themselves and not the IFM. In addition to, changes mandated by Regulators, changes which are proposed by the IMF which are for the benefit of the Unitholder, should also be borne directly by the fund. To determine if a change is "for the benefit of Unitholders" either the fund's Independent Investments Review Committees' concurrence should be required or the CSA should publish a list of changes which it has pre-determined are NOT to be deemed "for the benefit of Unitholders".

6. Redemption

A fund would be considered to be an "open-end" fund if it offered any redemption at any time based upon NAV.

Harvest Position:
As closed-end funds are unique market traded vehicles and differ from open-end funds, we believe that it is appropriate for the two types of funds to offer different features, albeit features which may be similar in some respects. Further, the redemption at NAV feature is a benefit for closed-end Unitholders as this feature tends to reduce (but not necessarily eliminate) the degree of the market price discount to NAV.

An annual redemption at NAV does not provide the ongoing NAV liquidity that an open end fund provides to unitholders. A closed end unitholder must therefore commit to the investment thesis and longer term hold period where an open end fund unitholder may choose to exit at any time. The annual redemption provides a "pressure relief" valve to a unitholder that chooses to exit at the one specific time of year which could be for any number of reasons. Otherwise closed end fund unitholders are subject to liquidity through the daily trading price provided in the market. We believe that this is a generally positive feature and should be left in place.

On behalf of myself and colleagues at Harvest, we wish to thank you for the opportunity to provide our comments. We do believe the closed end fund industry is an innovative and vibrant market which stands out as a separate category from mutual funds. Closed end funds are individual prospectus products that are strenuously vetted through a syndicate and regulatory process before going to the market where they are recommended by experienced and licensed individuals of the IIROC community.

Sincerely

Michael Kovacs
President & CEO