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Autorité des marchés financiers
New Brunswick Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

c/o

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Me Anne-Marie Beaudoin
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Dear Sirs/Mesdames:

Request for Comment - Proposed Amendments to National Instrument 81-102 *Mutual Funds* ("NI 81-102") and Other Matters Concerning National Instrument 81-104 *Commodity Pools* ("NI 81-104")

This letter is being provided to you in response to the Notice and Request for Comment – *Proposed Amendments to NI 81-102 and Other Matters Concerning NI 81-104* (2013) 36 OSCB (Supp-3) (the "Proposal"). Our letter is divided into two parts. The first part deals with the proposed amendments which apply to closed-end funds ("CEFs"). The second part deals with the proposed amendments relating to securities lending, repurchases and reverse repurchases by mutual funds set out in Annex C of the Proposal. We have further restricted our comments as requested in CSA Staff Notice 11-324, following the numbering for the questions set out in the Proposal.

PART 1
GENERAL COMMENTS ON THE REGULATORY REGIME

We do not believe that non-redeemable investment funds (closed-end funds or CEFs) should be regulated in a manner similar to mutual funds, as contemplated by the Proposal. Closed-end funds are very different from mutual funds in their structure, operations (including requirements for and means of achieving liquidity) and distribution models, such that they should be governed by a correspondingly different regulatory framework.

NI 81-102 was intended to regulate publicly-offered non-listed investment funds that give investors the right to redeem securities daily on demand at a price based on the net asset value of those securities. As noted in the Notice proposing NI 81-102, this key feature of a mutual fund—the right to redeem securities on demand—dictates investment constraints designed to avoid portfolios that cannot be precisely valued or would be so illiquid as to make the redemption right unrealistic.[1] Closed-end funds, on the other hand, are not redeemable daily on demand, calling into question the rationale for subjecting them to the same rules.

As a result of the method of distribution of CEFs i.e. through full service investment dealers, a number of market disciplines have been developed, in addition to existing regulatory requirements. For example, closed-end funds are offered by way of long-form prospectus with dealers as agents. There is therefore the discipline of negotiation between the fund manager and the agents as to appropriate structure, including investment strategies, investments, fees, redemption rights etc. Finally, fund managers and dealers have reputational risk in terms of the offerings with which they are associated. Several of the investment dealers have a robust internal approval process required for their participation in any fund offering.

We do not fully understand the "levelling the playing field" comments in the Proposal. We appreciate that the effects of regulation on competition should be taken into account in fostering "fair and efficient capital markets". However, mutual funds and closed-end funds are not necessarily in competition with each other—because of the differences between the two types of products, a mutual fund may well be suitable for a particular investor, while a closed-end fund may not be. In addition, there are several fund managers which participate in both the conventional fund and CEF markets. Moreover, "fair and efficient capital markets" are also characterized by choice and innovative, diversified products that are available to all investors—including retail investors—provided that there is timely and accurate disclosure about their fundamental features. We also believe securities regulation should foster participation by market participants of all

[1] <https://www.osc.gov.on.ca/en/SecuritiesLaw_rule_19970627_81-102_n.htm>.

sizes who bring innovation and new products to the market and we believe some analysis of the impact of these proposals on market participants and on the products they would bring thereafter should be undertaken.

We believe it would have been better to have had a more developed proposal relating to NI 81-104 available for discussion in order to assess the amendments now being proposed to NI 81-102 on a holistic basis. We look forward to reviewing the proposal for NI 81-104 in detail and believe a consultative process prior to finalizing such proposals would be beneficial.

On the topic of transition, we believe that existing CEFs that would not be in compliance with the proposed amendments if enacted should be grandfathered. These funds were structured, marketed and sold on the basis represented and disclosed in the prospectus and are available to be purchased in the secondary markets based on the disclosure record. It could be problematic if a fund had to change or curtail investment strategies to the economic detriment of investors.

SPECIFIC QUESTIONS OF THE CSA RELATING TO THE PROPOSED 81-102 AMENDMENTS

Investment Restrictions

Concentration Restriction

2. Do you agree with the 10% issuer concentration restriction for non-redeemable investment funds set out in proposed amended section 2.1 of NI 81-102? If not, please provide reasons why non-redeemable investment funds should be permitted to have a higher concentration limit, and how non-redeemable investment funds would benefit from a higher limit. Please also propose a higher limit and provide reasons for the limit.

If NI 81-102 provides for a concentration limit that is greater than 10% for non-redeemable investment funds, should NI 81-104 provide an even higher concentration limit for non-redeemable investment funds that are alternative funds subject to NI 81-104? Or should the concentration limits be the same for non-redeemable investment funds in both NI 81-102 and NI 81-104? We invite feedback on the appropriate balance of the concentration limit in NI 81-102 for non-redeemable investment funds and the concentration limit for non-redeemable investment funds under the alternative funds framework in NI 81-104.

We do not think that the portfolios of closed-end funds should be subject to a concentration limit. Retail investors should continue to be permitted to purchase closed-end funds with concentrated portfolios, particularly in light of the absence of any events

suggesting that investor protection concerns require a change in this regard. We do note that generally for tax reasons a 10% concentration limit is regularly adopted by investment funds. Our view is that an individual CEF does not represent an overall investment portfolio but a strategy or product within an overall portfolio. Finally, given listing and customary redemption rights, CEFs may properly function with concentrated portfolios.

Investments in Illiquid Assets

3. As non-redeemable investment funds do not redeem their securities regularly based on NAV, the CSA propose that they be permitted to purchase and hold more illiquid assets than the levels currently permitted by subsections 2.4(1) to (3) of NI 81-102. However, we are concerned that a portfolio containing a significant amount of illiquid assets could lead to difficulties in valuing the NAV of the fund. It is critical that the NAV of an investment fund be accurately valued; for example, non-redeemable investment funds typically pay management and other fees based on the NAV of the fund, NAV is used to measure performance, and many non-redeemable investment funds offer annual redemptions based on NAV.

We have observed that many non-redeemable investment funds do not invest in a substantial amount of illiquid assets; in fact, the majority of non-redeemable investment funds, like mutual funds, hold minimal amounts of illiquid assets. Would the ability to purchase and hold more illiquid assets than the levels currently permitted by subsections 2.4(1) to (3) of NI 81-102 be beneficial for non-redeemable investment funds? What types of illiquid assets do non-redeemable investment funds wish to invest in, and why?

The CSA invite comment on the amount of illiquid assets that would be appropriate for non-redeemable investment funds to purchase and hold, and whether non-redeemable investment funds should be given more time than 90 days to divest illiquid assets (please refer to the mutual fund divestment requirements in subsections 2.4(2) and (3) of NI 81-102). Is there a minimum amount of liquid assets that non-redeemable investment funds should be required to hold to meet ongoing liquidity needs (e.g., to pay management fees and operational expenses)? Should the limit on illiquid asset investments be different for non-redeemable investment funds that do not offer any redemptions and non-redeemable investment funds that offer annual redemptions?

As noted, the primary purpose of restrictions regarding illiquid assets is to ensure that a mutual fund will be in a position to redeem its securities on demand. This is not as much a concern for a closed-end fund.

While we appreciate that illiquid assets may be more difficult to value than liquid assets, the investment fund manager of a closed-end fund is subject to a variety of rules in respect of the calculation of net asset value, including, in Ontario, a statutory standard of care and fiduciary duty and, given the prevailing view that valuation constitutes a conflict of interest matter, National Instrument 81-107 - *Independent Review Committee for Investment Funds*.

While additional restrictions may not have a significant impact on existing funds, they may inhibit potentially valuable product development and innovation going forward. Against this backdrop and without knowing what may develop, we do not think that it is appropriate to impose illiquid asset restrictions on closed-end funds. We would welcome a discussion about whether the definition of illiquid asset should be updated. The market for some asset classes is large and liquid but public quotations are not avalaible.

Borrowing

4. We seek comment on whether the proposed requirement for non-redeemable investment funds to borrow from a "Canadian financial institution" is appropriate. For example, if the majority of an investment fund's assets are held outside Canada because it focuses on investing in foreign securities, should there be more flexibility to borrow from lenders other than those that are "Canadian financial institutions"? If so, what conditions should the other lenders have to meet?

According to the Proposal, "requiring borrowing from a lender that is licensed to carry on a lending business could provide additional monitoring and controls over a non-redeemable investment fund's cash borrowings that are based on the investment strategies and financial condition of the specific fund". The basis for this statement is not entirely clear to us and we question the appropriateness of imposing a restriction in the hope that a private actor (*i.e.*, the lender) will increase the rigour of monitoring and controls applicable to a fund.

In any event, the definition of "Canadian financial institution" excludes many lenders that are licensed to carry on business in other jurisdictions with comparable licensing regimes (see *e.g.*, Basel III). We are concerned that restricting sources of lending will increase costs to the borrowing fund (and therefore, its investors) without resulting in any clear, corresponding benefits.

Organizational Costs of New Non-Redeemable Investment Funds

8. We seek comment on the impact and the benefits and costs of proposed subsection 3.3(3) of NI 81-102. Are there other parameters that could be developed that would achieve benefits similar to the benefits from proposed subsection 3.3(3)? Please also comment on whether the capital raising model followed by non-redeemable

investment funds could support the payment of some of the organizational costs out of the proceeds of the initial public offering. Are there specific components of organizational costs that are more appropriately borne by the non-redeemable investment fund and components that are more appropriately borne by the manager? Please provide information about these cost components and what fraction each component typically constitutes of the total organizational costs for launching a new fund, and explain why it is appropriate for the fund or the manager to pay the specific cost components.

We are concerned about the proposals concerning organizational costs. The costs involved in bringing a closed-end fund to market are much higher than those associated with offering a mutual fund and include preparing, filing and translating a preliminary and final long-form prospectus that qualifies the securities only of the closed-end fund (as opposed to a simplified prospectus speaking to a family of mutual funds). These costs are significantly higher because of the form of prospectus used, the involvement of investment dealers and the extensive due diligence undertaken by the parties. As a result, fund and agents legal fees, audit fees, filing fees, translation fees and printing costs can be significant and do not vary with the amount of the proceeds raised. In addition, CEFs are offered on a one-time basis and are not in continuous distribution like open-ended funds. While it may be difficult to judge the impact of this change on the market, we would be concerned if management fees increased or market participants who bring innovative and new products to the market decided not to participate. As noted in the Proposal, proposed subsection 3.3(3) of NI 81-102 may well result in fewer offerings of closed-end funds.

Naming Convention for Investment Funds

10. Would requiring an alternative fund to include the words “Alternative Fund” in its name achieve the purpose of distinguishing alternative funds from other investment funds for investors and the market? If not, please propose other ways to facilitate the ready identification of alternative funds.

In additions, would requiring investment funds governed only by NI 81-102 to include specific words (e.g. “Conventional Fund”) in their name further this purpose? If not, why not? Would the diversity of investment funds that are governed only by NI 81-102 and their different risk levels impede the creation of a uniform descriptor for such finds?

We do not disagree with the introduction of a mandated naming convention distinguishing closed-end funds from mutual funds. However, we are not certain that the designations of “Alternative Fund” and “Conventional Fund” are the best ones, and

would encourage the CSA to work with market participants to develop suitable naming conventions.

Transition Period for Investment Restrictions in Proposed Amended NI 81-102 and Alternatives

11. We are proposing that existing non-redeemable investment funds be required to comply with the investment restrictions in proposed amended sections 2.2, 2.3,{1} 2.4 and 2.5 of NI 81-102 18 months after the first coming-into-force date of the Proposed 81-102 Amendments pertaining to these sections. We invite feedback on whether the proposed transition period is sufficient. If not, please provide reasons for a longer transition period or provide alternatives to a transition period.

If you think that a grandfathering provision is warranted for existing non-redeemable investment funds, please comment on the scope of a grandfathering provision and explain why existing non-redeemable investment funds should not have to comply with specific sections in Part 2 of NI 81-102. Please also comment on the impact a grandfathering provision could have on fairness to new market participants and investor understanding.

We are strongly of the view that all current closed-end funds must be grandfathered in respect of the Proposals. The commercial bargain between such funds and their investors should be honoured; further the costs of transitioning in many cases will be significant and we do not believe current investors should bear the costs of transitioning to a regime which was not what they purchased in the first place.

* * *

We would also note that we are supportive of the proposed amendments relating to conflicts of interest, securityholder approval and custodian matters.

PART 2
SPECIFIC QUESTIONS OF THE CSA RELATING TO SECURITIES LENDING, REPURCHASES AND REVERSE REPURCHASES BY INVESTMENT FUNDS

Set out below, in bold, are aspects of the securities lending, repurchases and reverse repurchases proposals on which we have comments, followed by those comments.

The CSA are considering measures to enhance the transparency of the benefits, costs and risks of securities lending, repurchase and reverse repurchase transactions conducted by investment funds. We seek feedback on the following issues.

The CSA understand that it is common practice for securities lending agents to be compensated through receiving a share of the revenue generated from lending securities, repurchases and, if a lending agent is used, reverse repurchases. We also understand that some managers have established revenue-sharing arrangements under which revenue is shared between the investment fund and a lending agent related to the manager or between the investment fund and the manager. As the investment fund bears all the risks from securities lending, repurchases and reverse repurchases, the CSA are of the view that the revenue from engaging in these activities, after the payment of costs for conducting the activities, should be received only by the investment fund.

We understand that there is some controversy as to whether it is appropriate to characterize securities lending as an activity that imposes "costs" on a mutual fund (in this Part 2, a "fund").

If the CSA ultimately take the position that there are costs associated with the activity for a fund, we agree that the securities lending revenue remaining after the payment of such costs should be for the benefit of the fund. However, we would also like to take this opportunity to emphasize that revenue-sharing arrangements may well achieve this result.

To engage in securities lending on behalf of a fund, a securities lending agent (an "agent") must establish and maintain a complex securities lending platform, the costs of which (including operating costs) are generally borne by the agent. Such a platform requires significant investments in trained personnel and technology. Particularly given the over-the-counter nature of the securities lending market, in which pricing is opaque and influenced by many variables, research, analytics and trading tools can have an appreciable effect on lending revenues. In addition, considerable investments in risk management capabilities are required in connection with the review of counterparties and collateral on an ongoing basis. Meanwhile, reporting requirements include program reviews and the provision of lending program performance data. Finally, the agent incurs opportunity costs in engaging in securities lending on behalf of a fund. Revenue-sharing arrangements compensate agents for these costs, while aligning their incentives with those of the fund in ensuring that lending activity is profitable.

We further submit that the prevalence of revenue sharing as a means of compensating agents is in itself a consideration in favour of this type of arrangement. First, the transaction costs borne by a fund are minimized when it seeks to negotiate an arrangement that is consistent with market practice. Second, the frequency of revenue sharing among securities lending market participants facilitates comparisons among arrangements for the benefit of investors.

Currently, depending on the terms of the securities lending agreement, the financial statements of an investment fund that engages in securities lending may disclose the revenue from securities lending net of the lending agent's share. Further, in such cases, the amount paid to the lending agent does not appear in the financial statements as a cost of conducting the activities.

While the amount of revenue generated by securities lending and repurchases may be relatively small, the CSA are of the view that because mutual funds (and, under the Proposed 81-102 Amendments, all investment funds) may lend, or sell in repurchase transactions, up to 50% of total assets,[Footnote 1] information about the returns, costs and risks of securities lending and repurchase activity is relevant to investors. [Footnote 1: The CSA are proposing to change the limit on the amount of securities loaned, or sold in repurchases, by all investment funds from 50% of total assets (excluding collateral delivered to the fund) to 50% of NAV. See "Summary of Proposed Amendments – (ii) Investment Restrictions – Securities Lending, Repurchases and Reverse Repurchases".]

We acknowledge that information about the returns, costs and risks of securities lending may be relevant to investors. However, we do not think that, simply because a fund has the ability to lend up to 50% of its total or net assets, it will necessarily do so, such that such information is inevitably relevant to investors. Funds engage in securities lending activities to varying degrees. We do not think it will be helpful, and, indeed, may even be confusing, to require extensive disclosure about securities lending activities that could affect only a small portion of a fund's assets and overall investment activities, particularly if that disclosure dwarfs that in respect of the fund's primary investment strategies.

It is respectfully submitted that the same materiality principle must be applied to all required disclosure, including that regarding securities lending, thereby taking into account factors such as the percentage of assets at risk and potential losses from the activity in relation to the other activities of the fund. Moreover, any securities lending disclosure should be consistent with the disclosure regarding other, more integral investment strategies. To take only one example, we think it is important to consider the basis for requiring extensive disclosure regarding the costs of engaging an agent when brokers also impose costs on a fund that, depending on the relevant levels of securities lending and trading activities engaged in by the fund, may be much larger than securities lending fees in both dollar and percentage terms, relative to the net asset value of the fund.

The CSA think that it is important for investors to understand the returns from securities lending and how such revenue has contributed to the performance of the investment funds. We also think it is important for investors to be aware of the

costs, the profitability and the scope of an investment fund's securities lending activities, so that they can assess the efficiency of the lending. Transparency of the revenue and cost is particularly important if the investment fund uses a lending agent that is related to the manager, which may give rise to conflicts of interest. Further, if the related lending agent shares in the revenue from securities lending, the manager could market its funds to investors as having a management fee that is lower than it would otherwise be, without investors being aware of the additional compensation paid to the affiliated lending agent through the revenue sharing arrangement.

We agree that the extent to which a fund's performance is tied to its securities lending activities, the efficiency with which those activities are conducted and conflicts of interest raised by those activities are important features of a fund's operations. Because investors vary significantly in their sophistication, however, we are not confident that disclosure about all of the items listed above will be useful and, in this regard, would highlight in particular disclosure regarding costs, profitability and scope, designed to permit investors to "assess the efficiency of lending".

Accordingly, we are considering measures to enhance the transparency of the benefits from securities lending and the costs paid to earn the returns. We are of the view that disclosure of the gross returns from, and the costs of, securities lending would provide additional transparency.

We seek feedback on approaches that would achieve the outcome of providing disclosure of the gross returns and the costs of securities lending.

1. Are there other costs of conducting securities lending, other than the fee paid to the lending agent?

As mentioned above, we do not think that it is entirely clear that securities lending imposes costs on a fund and would encourage the CSA to carefully consider the views on this issue expressed by those commenting on the Proposal, as well as other participants in the securities lending market, before reaching a conclusion on this question.

2. What approaches could the CSA consider to ensure that the financial statements of an investment fund disclose the revenue from securities lending inclusive of the share paid to the agent? What approaches could the CSA consider to ensure that the financial statements of an investment fund disclose the costs of securities lending?

3. What approaches could the CSA consider to ensure that the costs of securities lending are included in either the management expense ratio or the trading expense ratio of the investment fund?

Given the scope of our expertise, we would respond to Questions 2 and 3 from a procedural, as opposed to substantive standpoint. While we recognize and support the need for transparency, we also appreciate that extensive rules already govern the preparation of financial statements and management reports of fund performance. We would encourage the CSA to take into consideration the views of the Canadian Institute of Chartered Accountants, the International Accounting Standards Board (given the contemplated transition to International Financial Reporting Standards) and any other relevant professional bodies, such as the Accounting Standards Oversight Council, in any proposed revisions to these requirements.

4. We think that the disclosure of the returns and the costs of repurchases should be the same as the disclosure of securities lending, since both activities are substantively similar. Should the same type of disclosure for reverse repurchases be provided? Should the returns and costs of securities lending and repurchases be aggregated, rather than disclosed separately?

We have no comments on these questions.

5. In order to provide investors with transparency on the profitability and scope of an investment fund's securities lending and repurchase activities, the CSA are considering requiring the following additional disclosure, in the investment fund's management reports of fund performance, regarding such activities:

- **The average daily aggregate dollar value of securities lent (or sold in repurchase transactions) obtained by**

  (i) adding together the aggregate dollar value of portfolio securities that were lent (or sold) in the securities lending (or repurchase) transactions of the investment fund that are outstanding as at the end of each day during the financial year or interim period; and

  (ii) dividing the amount obtained under (i) by the number of days during the financial year or interim period.

- **The percentage profitability of securities lending (or repurchase transactions) obtained by**

  (i) dividing the revenue from securities lending (or repurchase) transactions during the financial year or interim period by the average daily aggregate dollar value of securities lent (or sold in repurchase transactions); and

  (ii) multiplying the amount obtained under (i) by 100.

• The percentage return from securities lending (or repurchase transactions) obtained by

> **(i) dividing the securities lending (or repurchase) revenue by the average net asset value of the investment fund during the financial year or interim period; and**
>
> **(ii) multiplying the amount obtained under (i) by 100.**

• The percentage of net asset value lent (or sold) obtained by

> **(i) dividing the average daily aggregate dollar value of securities lent (or sold in repurchase transactions) by the average net asset value of the investment fund during the financial year or interim period; and**
>
> **(ii) multiplying the amount obtained under (i) by 100.**

• The maximum amount of securities lent (and sold in repurchase transactions) in any day during the financial year or interim period, both as a dollar amount and as a percentage of net asset value on that date.

Do you agree that these disclosure items are useful in increasing transparency regarding the profitability and scope of a fund's securities lending and repurchases? Are any of these items less useful to investors, in light of the costs to the investment fund of calculating and disclosing them?

While we acknowledge the importance of transparency with respect to material securities lending activities of a fund, we would also emphasize the importance of a balanced and proportionate disclosure framework. In constructing a disclosure regime, it is important to consider the benefits provided by disclosure (including the risk of "information overload" or excessively granular disclosure that may simply serve to confuse), as well as the compliance or administrative costs of providing that disclosure.

The measures described above would arguably provide investors with a significant amount of data about securities lending in comparison to the information they receive about the primary investment strategies of a fund. This could divert their focus from the latter, which will be far more material. We would recommend careful scrutiny of the need for and scope of potential changes to disclosure requirements, with input from standard setting bodies such as those referenced in our response to Question 2 and 3, above, industry associations, market participants and investors themselves.

6. Are there any other measurements regarding securities lending, repurchases or reverse repurchases that would provide useful information to investors in addition to, or in lieu of, the items described in question 5?

While we appreciate the attraction of quantitative measurements in relation to securities lending activities, we think that qualitative disclosure, consistent with the existing disclosure regime, may also enhance investor understanding of securities lending activities, including the risks associated therewith. In this regard, we note the disclosure required by Instructions 4 and 5 to Item 12 of Form 81-101F2 and would encourage the CSA to consider whether this type of disclosure should also be required in prospectuses prepared in accordance with Form 41-101F2.

7. Items 3.4 and 19 of Form 41-101F2, Item 5 of Part A and Item 4 of Part B of Form 81-101F1, and Item 10 of Form 81-101F2 require disclosure in an investment fund's prospectus or annual information form (AIF), as applicable, regarding certain service providers to the fund. The CSA are considering adding the agent in respect of securities lending, repurchases and, if applicable, reverse repurchases to the list of service providers detailed in these Items. Another outcome of adding the agent to these Items would be that the agent's relationship to the manager would also be disclosed in the prospectus or AIF, so that investors can assess whether amounts are being paid to entities affiliated with the manager in connection with the investment fund's securities lending, repurchase or reverse repurchase activities. Is this disclosure useful? Should any additional details regarding the agent be provided in an investment fund's prospectus or AIF?

We agree that, if securities lending activities conducted by an agent of a fund are material in relation to the other activities of the fund, information about that agent should be disclosed on a basis consistent with the disclosure regarding the transfer agent of the fund.

8. We understand that investment funds may seek different indemnities from their lending agent, which provide varying degrees of protection from losses that could arise from securities lending. Would disclosure of the indemnities obtained by an investment fund from its lending agent in the AIF or prospectus of the investment fund be useful for investors in assessing the risks from securities lending?

National Instrument 81-102 - Mutual Funds requires a fund to adjust, daily, the amount of collateral it holds to ensure that the market value thereof is at least 102 percent of the market value of the loaned securities. Against this backdrop, we believe that, in many circumstances, borrower indemnification provisions would not materially affect the risks associated with securities lending and accordingly would not propose requiring specific disclosure about them. If, in particular circumstances, an indemnification provision is

determined to be material, then additional information about it may be provided in response to existing form requirements, such as Item 12 of Form 41-101F2 or Item 12(2) of Form 81-101F2.

9. Generally, investment funds do not file the agreements that they enter into with their lending agent on SEDAR. Currently, these agreements are not listed in the AIF under Item 16 of Form 81-101F2 or the prospectus under Item 31 of Form 41-101F2. Should these agreements be required to be included as material contracts and filed on SEDAR?

Securities law requires funds to file "material contracts" with their prospectuses and, under National Instrument 81-106 - Investment Fund Continuous Disclosure, upon their execution. In light of the range of securities lending activities engaged in by various funds, we think it is appropriate for the investment fund manager to determine whether or not a securities lending agreement constitutes a "material contract" of the fund and would not propose listing such agreements as "material contracts" in the applicable forms.

* * *

We thank you for the opportunity to comment on the Proposal and would be pleased to discuss our thoughts with you further. If you have any questions or comments on our comments relating to closed-end funds, please contact Andrew Aziz (416-862-6840; aaziz@osler.com); if you have any questions or comments on our comments relating to securities lending, please contact John Black (416-862-6586; jblack@osler.com) or Anna Huculak (416-862-4929; ahuculak@osler.com).

Yours very truly,

"Osler, Hoskin & Harcourt LLP"

Osler, Hoskin & Harcourt LLP