

August 22, 2013

VIA EMAIL

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
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

Attention:

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The Secretary  
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Autorité des marchés financiers  
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Dear Sirs/Madams:

**Re: Canadian Securities Administrators (“CSA”) Notice and Request for Comment Regarding Proposed Amendments to National Instrument 81-102 *Mutual Funds* (“NI 81-102”) Companion Policy 81-102CP *Mutual Funds* and Related Consequential Amendments in Respect of the Modernization of Investment Fund Product Regulation (Phase 2) (the “Notice”)**

We would like to thank the CSA for the opportunity to comment on the proposed amendments and questions set out in the Notice and submit for your consideration comments in respect of certain of the questions. We have only responded to those questions which we feel are applicable to the non-redeemable investment funds (the "ROI Funds") managed by Return On Innovation Advisors Ltd. ("ROI Advisors").

As a general comment, we note that the proposed amendments to NI 81-102 impose investment restrictions upon non-redeemable investment funds that are more suitable for mutual funds, which are redeemable on demand with reference to NAV. We submit that the investment restrictions for mutual funds, non-redeemable investment funds and alternative funds should be based on the nature of the particular fund, including careful consideration of fundamental differences between these types of funds such as the redemption rights of unitholders, and these differences must be reflected in the regulation of these different types of funds. We also note that it is difficult to comment on the proposed amendments to NI 81-102 without currently having the alternative fund framework in place. The proposed amendments would effectively mandate that if the ROI Funds wish to continue to operate under their existing investment objectives and investment strategies (as presented to investors in the current public disclosure documents) they do so as alternative funds or they attempt to transition from investment fund status to industrial issuer status.

As discussed below in greater detail, if the CSA determines that funds which invest in nonguaranteed mortgages and illiquid assets should be governed by the alternative fund framework, we would request that such framework be put in place prior to giving effect to any proposed amendments to NI 81-102.

## **ANNEX A - 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 agree with the 10% issuer concentration restriction as we do not believe a concentration restriction is required for non-redeemable investment funds or alternative funds.

As highlighted above in our general comments, we believe that restricting concentration in a single issuer to 10% is an example of an investment restriction that is more suitable to mutual

funds than to non-redeemable investment funds given the difference between the liquidity provided by the different types of funds. Non-redeemable investment funds are generally redeemable at NAV only once per year as opposed to the daily redemptions at NAV provided by mutual funds and, accordingly, non-redeemable investment funds should not be required to restrict the concentration of their investments to be able to provide liquidity.

Furthermore, while certain non-redeemable investment funds may restrict concentration in a single issuer to 10%, depending on the investment objectives and investment strategies of the particular investment fund, a concentration restriction of 10% may be unduly restrictive. We are not aware of any proven benefit in instituting a blanket prohibition on investing more than 10% of a non-redeemable investment fund's net assets in a single issuer. Accordingly, we submit that investors are best-served by a regulatory regime that permits portfolio managers to exercise discretion over when additional diversification or alternatively, concentration, in a given investment fund may be in the best interests of investors in such investment fund.

### ***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 nonredeemable investment funds that do not offer any redemptions and non-redeemable investment funds that offer annual redemptions?*

As the CSA notes above, non-redeemable investment funds do not redeem their securities regularly based on the NAV of such investment fund. The restrictions concerning illiquid assets set out in Section 2.4 of NI 81-102 are useful to ensure that there is not a mismatch between the redemptions available to unitholders of the investment fund and the ability of the investment fund to fund those redemptions by some combination of cash on hand and liquidating some of its investments. Where a unitholder's redemption rights are relatively

infrequent, for example annually at NAV, we submit that it is not appropriate to restrict such investment fund's ownership of illiquid assets.

The CSA's comment regarding management and performance fees being tied to NAV and noting that significant investments in illiquid assets could lead to difficulties in valuing the NAV of the fund presupposes that any difficulty in calculating the NAV of a fund which holds significant illiquid assets would err on the side of overvaluing those assets. In fact, valuation of an investment fund's assets is typically carried out by a third-party valuation agent and the valuation of illiquid assets must be conducted in a manner that is consistent with the valuation principles disclosed to investors in the investment fund's prospectus. We believe that investor choice with respect to investment opportunities is extremely important and disclosure is the appropriate means of regulation. To this end, an investment fund's basis for calculating NAV, including the valuation policies and procedures of the fund and the extent to which the valuation practices differ from Canadian GAAP, is already required to be set out in detail in the investment fund's prospectus per Item 20 of Form 41-101F2 and we submit that the disclosure currently provided by non-redeemable investment funds is sufficient for investors to make an informed investment decision.

As further discussed below, a significant portion of the assets of the ROI Funds are relatively illiquid assets such as commercial mortgages and loans secured by, or that provide a participating interest in, real property or ownership interests in real property. These assets have helped ROI Advisors deliver long-term capital appreciation and preservation of capital to its investors and we submit that the ability to gain exposure to this asset class is beneficial to investors in non-redeemable investment funds.

Divesting a portfolio of illiquid assets (including mortgages and private real estate interests) at fair market value, would be a time-consuming process and would be affected by a variety of asset-specific and macroeconomic factors. Accordingly, ROI Advisors submits that a 90-day window is woefully insufficient to sell a portfolio of illiquid assets in a responsible manner that ensures the preservation of NAV. In addition, having such a limitation commonly known in the marketplace would place non-redeemable investment funds at a disadvantage with respect to their ability to negotiate and divest of such illiquid assets at a fair market value. ROI Advisors strongly believes that existing non-redeemable investment funds, such as the ROI Funds, should be grandfathered and the illiquid assets currently held by them should either be allowed to mature without the requirement to sell these assets at a discount to fair market value or, where there is no maturity date, be allowed to be held for up to five years.

### ***Investments in Mortgages***

5. *We invite comment on the impact of the proposed restriction on investments in non-guaranteed mortgages for publicly offered non-redeemable investment funds. We also seek feedback on the transition period for the proposed restriction. If you consider that a transition period longer than 24 months is required, please explain why. Alternatively, if you think that a grandfathering provision is warranted to exempt these types of funds from the application of the proposed restriction on investments in nonguaranteed mortgages, please comment on the impact such a provision could have on fairness to new market participants and investor understanding.*

As discussed above with respect to the CSA's question regarding illiquid assets, we believe that existing non-redeemable investment funds should be grandfathered and a 24 month

transition period is insufficient to dispose of nonguaranteed mortgages and other illiquid assets.

***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, 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 submit that a grandfathering provision is appropriate for existing non-redeemable investment funds. As discussed in our previous responses, non-redeemable investment funds like the ROI Funds that invest generally in mortgages and other categories of illiquid assets and a sale of those investments before their maturity date in a responsible manner that ensures the preservation of NAV would be a time-consuming process. Accordingly, we request that existing investments that do not comply with the proposed amendments to section 2.2, 2.3, 2.5 and 2.5 of NI 81-102 be allowed to mature or, where the investment does not have a maturity date, be allowed to be held for up to five years, ensuring that existing investors are not penalized as a result of the proposed amendments.

We thank you for the opportunity to comment on the proposed amendments. Please do not hesitate to contact the undersigned should you have any further questions.

Yours truly,



Wilfred Vos

President & Founding Partner