Artemis
Investment Management

August 23, 2013

Delivered by email: comments@osc.gov.on.ca, consultation-en-cours@lautorite.qc.ca

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:

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8

Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3

Dear Sirs and Mesdames:

Re: CSA Notice and Request for Comment re: Proposed Amendments to National Instrument 81-102, Companion Policy 81-102CP, Related Consequential Amendments and Other Matters Concerning National Instrument 81-104 and Securities Lending, Repurchases and Reverse Purchases by Investment Funds (the "CSA Notice")

We are writing in response to the Canadian Securities Administrators' ("**CSA**") request for comments on the proposed amendments to National Instrument 81-102 ("**NI 81-102**"), Companion Policy 81-102CP, related consequential amendments and other matters (the "**Proposed Amendments**") published in the CSA Notice at (2013) 36 OSCB (Supp-3), as updated by CSA Staff Notice 11-324. Thank you for providing us with this opportunity to provide our comments.

Artemis Investment Management Limited ("**Artemis**", "**we**" or "**us**") is registered in the Province of Ontario as an investment fund manager, exempt market dealer, portfolio manager and commodity trading manager and as an investment fund manager and exempt market dealer in other applicable jurisdictions. We offer a diverse line-up of publicly traded non-redeemable investment funds (commonly referred to as "**closed-end funds**") with a wide range of investment mandates designed to support a variety of financial objectives. These include Artemis U.S. Capital Appreciation Fund, Citadel Income Fund and Energy Income Fund, the units of each of which are listed and trade on the Toronto Stock Exchange.

While there are many issues raised by the Proposed Amendments, a number of which have been addressed in the recent comments letters of other industry participants, our comments are focused on the following three substantive matters which, from our perspective, merit the greatest concern:

1) closed-end funds are fundamentally distinct from mutual funds and should continue to be regulated differently, rather than being treated in a manner nearly identical to mutual funds;

2) the proposed prohibitions on warrant and other "dilutive" offerings by closed-end funds are unduly prohibitive and ignore fundamental aspects of closed-end funds which distinguish them from mutual funds; and

3) the proposal to prohibit the organizational costs of new closed-end funds from being borne by the funds also ignores important differences between closed-end funds and mutual funds, will most likely not lower costs for investors and may, in fact, increase such costs.

Closed-End Funds are Distinct from Mutual Funds and Merit Different Treatment

As noted by other commenters, and as acknowledged by the CSA in the CSA Notice, closed-end funds differ from mutual funds in certain key aspects, including: (i) unlike mutual funds, closed-end funds do not offer unlimited securities on a continuous basis; (ii) closed-end funds do not redeem their securities at net asset value ("**NAV**") on a regular basis; (iii) instead, they typically issue a fixed number of securities in an initial public offering, following which the securities are generally listed, and trade, on an exchange at market prices which may be at a premium or discount to NAV; (iv) closed-end funds give investors the right to redeem their securities annually at a price based on the NAV of the securities; (v) closed-end funds and mutual funds have different liquidity requirements; and (vi) while mutual funds are primarily distributed by mutual fund dealers, the creation and distribution of closed-end funds involves, in addition to the issuers, multiple industry participants, including investment dealers in the underwriting syndicate for the funds' public offerings, portfolio managers and their respective counsel.

The foregoing differences between closed-end funds and mutual funds are unequivocal and fundamental. Accordingly, it is our view that the CSA's Proposed Amendments to regulate closed-end funds in a manner nearly identical to mutual funds is unwarranted and inappropriate. We also believe that the CSA has failed to establish a sufficient policy basis for the Proposed Amendments as they would apply to closed-end funds. Therefore, we agree with other commenters that, as closed-end funds are distinct from mutual funds, they should be subject to different rules and regulation and we would encourage the CSA to consider further consultation and research before making any significant changes to the manner in which closed-end funds are currently regulated.

Warrant Offerings

The proposed new section 9.1.1 of NI 81-102 would prohibit closed-end funds from issuing warrants, rights or specified derivatives and the new subsections 9.3(2) and (3) of NI 81-102 would prohibit the issuance of securities by closed-end funds at a price that "is less than the net asset value per security of that class" and, in the case of prospectus offerings, "causes dilution of the net asset value of other outstanding securities" of the funds. For ease of reference, the foregoing types of issuances and offerings are collectively referred to herein as "**Warrant Offerings**".

In support of the proposed prohibitions on Warrant Offerings, the CSA states as follows in the CSA Notice:

> In recent years, the CSA have observed non-redeemable investment funds issuing warrants that could potentially dilute the value of the securities held by investors who do not exercise the warrants… As warrants are automatically issued to securityholders, warrants may also appear to be coercive, with securityholders obligated to make an additional investment or face the risk of dilution... [I]nvestors in a non-redeemable investment fund may not expect the costs of warrant issuances to be part of their investment bargain; specifically, investors do not generally expect that the fund they invest in will seek additional capital from them after they have made the initial investment, or that they will have to incur costs for the fund to raise additional capital. The CSA are of the view that a restriction on warrant issuances will not unduly limit the ability of an investment fund to raise additional money. A manager that wishes to raise additional money for its fund may file a prospectus to issue new securities, provided that the issuance is not dilutive to existing securityholders.

It is our view that the proposed prohibitions on Warrant Offerings, as they would apply to closed-end funds, are unduly prohibitive and ignore both the fundamental aspects of closed-end funds which distinguish them from mutual funds as well as the benefits of Warrant Offerings to closed-end funds and their investors.

We submit that the units of closed-end funds are more analogous to common shares of a corporate listed issuer than they are to units of mutual funds and that market price of the units of closed-end funds, rather than NAV, is the key benchmark by which investors measure the value of the funds. In fact, it has been a long-observed feature of listed Canadian closed-end funds that their units trade at a discount to NAV. Unlike with mutual funds, the primary liquidity for unitholders of closed-end funds is not a redemption right but is instead obtained by the sale of the units on the applicable exchange at market price. For these reasons, we contend that the CSA's focus on regulating dilution to NAV, as it would relate to closed-end funds, is unwarranted and somewhat akin to attempting to regulate book value. Given the significance of market price relative to NAV for units of closed-end funds, unitholders of such funds would not be inclined to buy warrants with an exercise price above market price of the underlying units, let alone at or above NAV per unit.

It is also our view that Warrant Offerings by closed-end funds, including ones at a discount to market price (rather than merely to NAV), are in many respects analogous to rights offerings by corporate listed issuers, which rights offerings are permitted to be, and are frequently, conducted at a discount to market price without attracting the same concerns about dilution. Given that such rights offerings by corporate issuers are permissible under applicable securities laws, we fail to see any justification for an outright ban on Warrant Offerings by listed closed-end funds.

With respect to the CSA's concerns about Warrant Offerings being potentially "coercive", we submit that such offerings are no more coercive than rights offerings conducted by corporate listed issuers. Unitholders of a listed closed-end fund have three options in relation to the warrants they receive under any Warrant Offering of the fund: they can sell their warrants, exercise them or allow them to expire. If the market price of the units of the closed-end fund increases prior to the expiry date of the warrants, unitholders will be inclined to exercise their warrants or monetize the value of such warrants by selling them to investors who will exercise the warrants. In such circumstances, the actions of the closed-end fund and its investment fund manager are not coercive and are identical to the decisions made by the directors and officers of any public company undertaking a similar offering.

We disagree with the CSA's contention that unitholders of closed-end funds may not expect such funds to conduct Warrant Offerings from time to time. It is our view that such Warrant Offerings are not uncommon and are generally known to the market, particularly to those investors who choose to invest, and stay invested, in closed-end funds. Moreover, there are investors for whom such Warrant Offerings are appropriate and there are examples where unitholders of closed-end funds have voted in favour of allowing such Warrant Offerings.

Finally, there are several benefits to Warrant Offerings by closed-end funds, including: (i) providing the funds with additional capital that can be used to take advantage of attractive investment opportunities; (ii) increasing diversification and investment options for the funds' portfolios; (iii) increasing the trading liquidity of the units of the funds; and (iv) reducing the management expense ratio of the funds. While these benefits may not be unique to Warrant Offerings, other types of offerings, including, as the CSA suggests, offerings of additional units of closed-end funds, are generally not viable options for the funds. There are relatively few closed-end funds whose units trade at the 5-6% premium to NAV necessary to support significant new sales of units, due in part to the need for investment dealers to act as agents for such offerings and the need for separate counsel for the agents. As a result, Warrant Offerings are a low cost, and effectively the only viable, option for closed-end funds to achieve the benefits listed above.

For the foregoing reasons, it is our view that the merits of Warrant Offerings by closed-end funds outweigh any potential risk of dilution to unitholders and that an outright ban on such Warrant Offerings would be unduly prohibitive and not justified. Instead, we propose that Warrant Offerings by closed-end funds, including ones at a discount to market price, should continue to be permitted, subject to adequate disclosure to unitholders and, where the possibility of such Warrant Offerings has not been previously disclosed, potential unitholder approval.

Organizational Costs

It is our view that the current organizational cost payment model for closed-end funds is, from the perspective of unitholders, fair and transparent. As other industry participants have commented, we expect that the Proposed Amendments which would prohibit closed-end funds from bearing their organizational costs would lead to increased management fees and redemption penalties for closed-end funds. These increased fees and penalties would not lower the total costs borne by unitholders of closed-end funds. Instead, managers of closed-end funds would likely charge annual costs and fees on a risk adjusted basis, resulting in higher total costs for unitholders.

Finally, the proposed changes with respect to organizational costs would have the following additional undesirable consequences: (i) fewer offerings of new closed-end funds; (ii) less diversification and innovation; and (iii) a reduction in the number of participants in the closed-end fund market.

If you have any questions concerning our comments, we would be pleased to discuss them in further detail.

Sincerely,

Conor Bill (signed)

Conor Bill
President and CEO

Anthony Shapiro (signed)

Anthony Shapiro
General Counsel