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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 marches financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, 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, ON M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marches 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 with respect to proposed changes to NI 81-102 and NI 81-104 in connection with Non-Redeemable Investment Funds

We are providing comments in response to the CSA Notice and Request for Comment published on March 27, 2013 (the "**Notice**") and extended on June 25, 2013 concerning proposed amendments to NI 81-102 and NI 81-104 (the "**Proposals**") with respect to publicly offered non-redeemable investment funds (in this letter referred to as closed-end funds or CEFs).

Introduction

By way of background, Middlefield creates and manages specialized investment products for individual and institutional investors and has assets under management of approximately $3 billion. Since inception in 1979, Middlefield has structured, marketed and managed numerous investment products including 27 TSX-listed closed-end funds, 51 limited partnerships focused on the Canadian resource sector as well as a number of retail-based mutual funds, real estate funds and a venture capital fund. Middlefield clients include individuals as well as Canadian and international financial institutions and corporations.

The closed-end fund market is an area in which Middlefield has established considerable expertise and an international reputation for excellence in the areas of innovative structuring, portfolio management, administration, marketing and client servicing. It is Middlefield's view that, similar to the U.K. and U.S., closed-end funds represent an important option among the capital market alternatives available to Canadian investors. For instance, closed-end funds are generally structured to provide regular cash distributions as well as the potential for capital appreciation, and can provide unique and innovative investment options not offered by open-end mutual fund products. With an aging population and an environment of continued low interest rates, the stable cash

flows offered by closed-end funds make them an attractive investment alternative for individual investors.

Middlefield is not responding to the numerous questions posed in Annexes A, B and C to the Notice but rather is commenting only on the issues referred to below.

General Comments

The Notice implies that there are problems with CEFs and that the Proposals will fix the problems, but the Notice does not provide any evidence that problems in fact exist and does not set out a cost/benefit analysis of why the Proposals are the best way to deal with any problems. Accordingly, we respectfully suggest that if there are problems with CEFs, those problems need to be stated and then the CSA needs to explain why the Proposals are the best way to go forward after setting out a cost/benefit analysis of the Proposals and other options, including the option of just requiring additional disclosure.

Middlefield believes that CEFs are beneficial to investors and the capital markets for various reasons:

- CEFs provide investment products with unique investment mandates (e.g. income or sector exposure) that may be more difficult for open-ended fund structures to meet

- The closed-end structure acts as an efficient method for mining and exploring companies to provide tax benefits to investors

- CEFs represented 32% of IPOs on the TSX in 2012 and play an important role for the exchange markets and all of its participants

Accordingly, we believe the CSA should take these benefits into consideration as the CSA contemplates making changes to the regulation of CEFs.

Levelling the Playing Field

According to the Notice, the CSA's stated purpose for the proposed changes set out in the Proposals is to introduce core operational requirements for CEFs analogous to those applicable to mutual funds, in order to provide baseline protections for investors regardless of whether they purchase an investment fund product structured as a mutual fund or a CEF. The Notice states that core operational requirements also will mitigate the potential for arbitrage within the current investment fund regulatory regime by levelling the playing field among CEFs, conventional mutual funds and exchange-traded mutual funds and by providing a more consistent regulatory framework for comparable investment products.

We believe that "leveling the playing field" is not a logically sound argument against CEFs. Currently, investment fund managers are not prohibited from creating and managing all three categories of funds. In Middlefield's case, we manage both CEFs and mutual funds. In addition, the creation and selling process for CEFs is very different from mutual funds, for example by the involvement of dealers and their counsel in vetting CEFs (e.g., internal dealer approval to sell the CEF, dealer due diligence on the

prospectus offering, dealer prospectus liability and dealer "know you product", "know your client" and "suitability" obligations with respect to clients).

If, however, the CSA truly wishes to level the playing field among the three types of funds, Middlefield recommends the CSA also should allow CEFs to utilize a prospectus and other disclosure documents similar to those used by mutual funds (i.e., simplified prospectus/AIF/fund facts). By allowing CEFs to utilize a prospectus and other disclosure documents similar to those used by mutual funds, there will be more comparability between mutual funds and CEFs, thereby making it easier for (1) investors to understand and compare the two types of investment products and (2) regulators to review CEF and mutual fund prospectuses. Middlefield also believes that if this recommendation is followed, then there is the likelihood that the costs of drafting prospectuses for CEFs and of clearing CEFs prospectuses through the securities regulators will be reduced, which will benefit CEF investors and fund sponsors.

Middlefield also recommends that the CSA publicly disclose for comments the proposed new "alternative fund" regulatory regime as soon as possible (at latest concurrent with proposed changes to the CEF regime) in order that fund sponsors can understand under what regime an existing or proposed CEF will be governed and thus can better respond to the Proposals. In that regard, Middlefield suggests that closed end funds which are "flow-through funds" should not be caught by all of the proposed CEF investment restrictions, as flow-through funds are a specialty fund and there is no logical reason to have mutual fund type restrictions (such as liquidity rules, concentration restrictions and

incentive fee restrictions) apply to flow-through funds. We assume the CSA did not intend flow-through funds to be covered by all aspects of the new CEF investment restrictions, but as currently drafted, except for the exemption from certain securityholder and regulatory approval requirements, the CEF Proposals appear to cover flow-through funds too.

Organizational Costs

The Proposals would prohibit CEFs paying organizational costs other than dealer fees and expenses. Middlefield has the following comments on this point:

- Organizational costs other than dealer commissions (i.e., issuer's counsel legal fees, agent's counsel legal fees, translation costs, auditor's fees, local counsel fees, marketing expenses, prospectus printing costs, securities filing fees and stock exchange listing fees) generally total approximately $600,000. By convention among the dealers and the sponsors, these latter organizational costs which can be charged to the CEF are limited to only 1.5% of the gross proceeds of the offering, with any excess above 1.5% paid by the sponsor. Accordingly, by requiring the sponsor to pay offering expenses which exceed the 1.5% cap, the dealers and the sponsors already have ensured that the sponsor's interests are sufficiently aligned with those of investors and thus already contribute to cost efficiencies on the launch of a CEF.

- If sponsors are required to pay the organizational costs of CEFs (which today amount to 1.5% of the gross proceeds, by convention among the dealers and sponsors), Middlefield believes that smaller sponsors may not be able to continue to carry on business and thus smaller sponsors may go out of business, leaving the CEF market to a limited number of sponsors which have significant capital. In turn, that would result in a reduction of jobs in the fund industry, less competition among fund sponsors and possibly fewer innovative products being developed and less investor choice. In addition, if there are only a small number of surviving sponsors, they might increase management fees in new CEFs or add a deferred sales charge in order to try to recoup increased costs.

Warrants and Rights

The Proposals would prohibit CEFs from issuing warrants and rights at a discount to net asset value ("**NAV**"), without providing any reasoning behind such proposed restriction other than the factual statement that an issuance below NAV would cause dilution to existing securityholders. In that regard, Middlefield has the following comments:

- If the prospectus of the CEF indicates that the CEF may issue warrants or rights at a discount to NAV in the future, why does the CSA believe that disclosure is not sufficient in this regard? Does the CSA believe that investors have not "bought into" the CEF's right to carry out future rights or warrants offerings at a discount to NAV, even though the prospectus discloses that ability? Does the CSA believe

that warrants or rights offerings below NAV are inherently offensive? If the CSA does believe any of the foregoing, then what empirical evidence does the CSA have to back up such beliefs?

- We understand that the offering of rights and warrants in the U.K. by CEFs is governed by Listing Rule 15.4.11R(1) which provides that unless authorized by its shareholders, a closed-end investment fund may not issue further shares of the same class as existing shares (including issues of treasury shares) at a price below the NAV per share "*unless they are first offered pro rata to existing holders of shares of that class.*" Accordingly, pro rata rights and warrants offerings to existing securityholders of a CEF are permitted in the U.K. at a price below NAV (and even if not offered pro rata to existing securityholders the offering is permitted if it has been authorized by shareholders), which suggests that the U.K. does not believe these offerings are inherently offensive. We also understand that in the U.S., the Securities Act of 1940 permits rights and warrants offerings below NAV that are issued to existing securityholders provided the rights or warrants expire not more than 120 days after their issuance, so the U.S. also does not seem to believe these offerings are inherently offensive. Given that rights and warrants offerings below NAV to existing unitholders are permitted both in the U.K. and in the U.S., why does the CSA believe that a prohibition on such issuances should exist in Canada and what empirical evidence does the CSA have to back up such belief?

- Because the vast majority of CEFs have an annual redemption at NAV, the CEF's size may be dramatically reduced as early as at the first annual NAV redemption (typically 18 months after the initial public offering) or annually thereafter. One way to increase the size of a CEF after such a decrease (and therefore reduce the expenses per unit and create additional liquidity for the units on the TSX) is to issue warrants or rights to its existing unitholders. A unitholder then can sell the right or warrant for its market value if the unitholder does not wish to exercise it. For example, Mint Income Fund, which was created in 1997 and has an annualized total return of 11.5% since inception, has completed a number of rights or warrant offerings to its unitholders at a discount to NAV. These offerings have generally been well received and have allowed the fund to offset outflows stemming from redemptions.

- The cost of carrying out a rights or warrants offering is much less than the cost of re-opening a CEF by means of a dealer led offering (e.g., a re-opening through a dealer led offering typically will have another dealer fee of at least 4%) or having to start up a new CEF. Does the CSA really wish to create additional costs within the system by forcing a sponsor to start up a new CEF or forcing an existing CEF to use a more expensive dealer led offering?

Grandfathering

Whatever changes to the CEF regime ultimately are made by the CSA, Middlefield believes that CEFs in existence at the time of those changes (including future offerings by those CEFs) should be grandfathered and governed by the existing rules. Existing CEFs were created by sponsors and purchased by investors under the current CEF regime and upon terms set out in long form CEF prospectuses and other public disclosure documents. Making changes will result in additional costs in terms of both time and money. It is not fair to investors or sponsors to impose those costs and change the already agreed upon commercial bargain for existing CEFs.

We thank you for the opportunity to provide this comment letter. We would be happy to discuss any aspect of this letter with you at your convenience.

Yours very truly,

Dean Orrico
President