PROPEL
CAPITAL

August 23, 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
Financial and Consumer Services Commission (New Brunswick)
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

John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
jstevenson@osc.gov.on.ca
Fax: 416-593-2318

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
Fax: 514-864-6381
Email: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: Modernization of Investment Fund Product Regulation (Phase 2)

Propel is a leading provider of investment products, having raised over $700 million in assets since December 2010. We currently provide management and administrative services to the following non-redeemable investment funds that offer our investors a variety of different investment strategies: Propel Multi-Strategy Fund, Canadian Convertibles Plus Fund, Canadian High Yield Focus Fund, Diversified Alpha Fund II, Strategic Income Allocation Fund, North American REIT Income Fund and North American Preferred Share Fund.

We refer to the Notice and Request for Comments (the "**Notice**") regarding proposed amendments to National Instrument 81-102 *Mutual Funds* ("**NI 81-102**") Companion Policy 81-102CP Mutual Funds and Related Consequential Amendments and Other Matters Concerning National Instrument 81-104 *Commodity Pools* and Securities Lending, Repurchases and Reverse Repurchases by Investment Funds under the Modernization of Investment Fund Product Regulation (Phase 2) published by the Canadian Securities Administrators (the "**CSA**") on March 27, 2013 and CSA Staff Notice 11-324 (the "**Extension Notice**").

We appreciate the opportunity to comment on the proposed amendments. We would also appreciate if the CSA would publish a revised draft of NI 81-102 for further review and comment. We also request that the CSA publish a discussion paper on NI 81-104 (similar to what was done for mutual fund fees) to allow for adequate consultation and review of the more significant changes that are proposed for investment funds and the redesign of the alternative fund framework generally.

In the Extension Notice you requested comment on a number of proposals for core operational requirements. The proposals that we support fully or conceptually are noted below:

1. Part 4 – Conflict of interest provisions
2. Part 5 – Securityholder and regulatory approval amendments for fundamental changes and proposed new securityholder approval requirements
3. Part 6 – Custodian requirements
4. Part 10 – Redemption requirements
5. Part 11 – Prohibitions on the commingling of cash
6. Part 14 – Record Date requirements and Securityholder record requirements
7. Part 15 – Sales communication requirements (subject to appropriate modifications to recognize differences between mutual funds and closed end funds)

Below are our responses on specific questions raised in Annex A of the Notice Specific Questions of the CSA Relating to the Proposed NI 81-102 Amendments.

Responses to specific questions raised in the Notice

Annual Redemptions of Securities Based on NAV

1. Securities legislation defines a "mutual fund" as, among other things, an issuer whose *securities entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest of the net assets of the issuer.*

   The CSA have historically taken the view that "on demand, or within a specified period after demand" in the definition of "mutual fund" means that the securities of the fund entitle the holders to request that their securities be redeemed by the fund more frequently than once a year. This view has permitted investment funds to redeem their securities once a year based on their NAV and still be considered non-redeemable investment funds. We seek feedback on whether the CSA should reconsider its present view and consider an investment fund to be a mutual fund if it offers any redemptions based on NAV.

   We agree with the current administrative practice, but we think that it would be helpful if the CSA would clarify the definition of mutual fund to provide more certainty.

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 a concentration restriction is necessary under NI 81-102 or NI 81-104. Concentration restrictions are imposed on mutual funds because of the need to maintain liquidity where a fund is redeemable on demand. Non-redeemable investment funds are redeemable only once annually at NAV and provides substantial advance notice of the redemption proceeds required, so portfolio managers can manage the portfolio to provide the necessary liquidity for a NAV redemption. Most non-redeemable funds are also listed on the Toronto Stock Exchange, so investors have a source of liquidity that does not impact on a fund or its investment portfolio.

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? –

We do not think that a restriction on illiquid assets is necessary. Restrictions on illiquid assets are relevant for mutual fund as they need for liquidity to fund daily redemptions at NAV.

The notice periods for annual NAV redemptions are tailored to facilitate the portfolio manager's management of a fund's portfolio to provide the necessary liquidity for such redemptions.

We also think that properly disclosed valuation principles together with accounting and auditing valuation methodologies for illiquid assets are sufficient to address CSA concerns.

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?

We believe that allowing the flexibility to borrow from lenders other than Canadian financial institutions would be beneficial to investors as it could result in lower fees and/or better terms for the leverage facilities. Other lenders could be required to meet certain size and/or rating requirements in order to be an approved lender.

Fund-of-Fund Structures

6. *Certain non-redeemable investment funds (top funds) use a forward agreement to obtain exposure to an underlying mutual fund that is not subject to NI 81-102. The underlying mutual fund in this fund-of-fund structure is established solely for the purpose of facilitating the investments of the top fund and it invests in accordance with the restrictions adopted by the top fund.*

   Under the Proposed 81-102 Amendments, an underlying mutual fund in a fund-of-fund structure would be required to be subject to NI 81-102. The investment restrictions in NI 81-102 applicable to mutual funds are generally more restrictive than the proposed investment restrictions for non-redeemable investment funds. The CSA are considering measures to enable top funds that are non-redeemable investment funds to continue to use the fund-of-fund structure described in the preceding paragraph, such that the underlying mutual fund may continue to invest in accordance with the investment restrictions applicable to the top fund. We seek comment on whether a carve-out from proposed paragraph 2.5(2)(a) of NI 81-102 would be effective for this purpose and if so, what conditions should attach to the use of the carve-out. Are there appropriate alternative measures to enable an underlying fund that is a mutual fund to follow the investment restrictions applicable to the top fund (a nonredeemable investment fund)?

   We believe the ability to invest in (or obtained exposure to) underlying funds should be maintained and we agree that a carve out may assist in this regard. We see no reason to require a bottom fund, a subsidiary or investee to be a mutual fund or otherwise restricted.

7. *Currently, many managers of non-redeemable investment funds that invest using the fund-of-fund structure described in question 6 have only filed prospectuses for the underlying fund in Ontario and/or Québec even though the prospectuses for the top fund (the non-redeemable investment fund) were filed in all of the jurisdictions of Canada.*

   Under proposed amended paragraph 2.5(2)(c) of NI 81-102, the underlying fund must be a reporting issuer in all the jurisdictions in which the non-redeemable investment fund is a reporting issuer. This is intended to prevent an indirect distribution of the securities of the underlying fund in jurisdictions where the underlying fund has not filed a prospectus and to ensure that the local jurisdiction has authority over both the top fund and the underlying fund. Should proposed amended paragraph 2.5(2)(c) apply to non-redeemable investment funds that use a fund-of-fund structure? If not, why not? What other parameters could be used to address the CSA's objectives?

Underlying funds have been required to a file a prospectus in Québec by the Autorité des marchés financiers. Some underlying funds formed as trusts also choose to file in Ontario in order to benefit from the limited liability provisions under the *Trust Beneficiaries' Liability Act, 2004* (Ontario).

We do not think it is necessary for an underlying fund to file a non-offering prospectus in more than one province since all of the continuous disclosure obligations (which are the same in all provinces) are triggered by becoming a reporting issuer in one jurisdiction.

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 disagree with a change to the status quo. If there is a concern about regulatory arbitrage then the CSA could prohibit non-redeemable funds from converting to mutual funds or could cause the investment fund manager or sponsor to repay the organizational costs of the fund upon conversion.

We note that substantially all of the organizational and IPO costs are non-discretionary and for investor protection.

Naming Convention for Investment Funds

10. *Please see question 13 in Annex B.*

We are not opposed to a requirement to disclose the type of investment fund such as currently required under Item 1.3 of Form 41-101F2.

The term "alternative fund" is too generic to include in a fund name. There are important distinctions among funds that are material and more relevant for inclusion in the name of a fund. For example, our the name of our funds include words like "Convertibles", "High Yield", "REIT Income" and "Preferred Share" that help investors understand and differentiate between products.

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 believe all existing funds should be grandfathered indefinitely given that these funds have already received CSA approval in their current format and investors made their investment decision to purchase these funds based on their current structure.

We thank you for the opportunity to express our views on these matters. Please do not hesitate to contact any of the undersigned if you have any questions in this regard.

Yours truly,

Raj Lala
President & CEO