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December 22, 2016

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 Consumers 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
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon
Superintendent of Securities, Nunavut

Attention: The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, ON 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 (Quebec) H4Z 1G3

Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comments regarding proposed repeal of National Instrument 81-104 *Commodity* Pools ("NI 81-104"), proposed amendments to National Instrument 81-102 *Mutual Funds* ("NI 81-102") and Related Consequential Amendments under Modernization of Investment Fund Product Regulation (Phase 2 – Second Stage) ("Phase 2 – Second Stage")

Introduction

The proposed amendments to NI 81-102 while focused on alternative funds, include provisions that impact non-redeemable investment funds and in certain aspects reflect the comments submitted by market participants in 2013. In its current form, we believe that Phase 2 – Second Stage will have a negative impact on investors that have invested in existing non-redeemable funds that have proven successful track records.

Brompton Funds Limited ("Brompton") (or its predecessors) has been a manager of non-redeemable funds since 2002 and also offers flow-through funds, mutual funds and an accredited investor hedge fund. Brompton currently manages 15 non-redeemable funds. Brompton focuses on offering unique investment products with investor friendly terms complemented with strong corporate governance. We would like to take this opportunity to provide comments in response to Phase 2 – Second Stage given that its impact will change the non-redeemable fund ("NRF") space and we believe will negatively impact investors.

Summary

The proposed amendments in Phase 2 – Second Stage provide a regulatory framework for alternative funds. However, provisions that impact NRFs through the Interrelated Investment Restrictions would reduce investor choice, product innovation and the raising of capital and would create regulatory rigidity, increasing the pressure on the regulators for exemptive relief. The due diligence process which NRFs are subject to provides investors with an independent review of the investment product and structure to ensure that not only can the NRF meet its investment objectives using its investment strategies but also that the NRF provides investors with appropriate rights and protections.

Brompton believes that investors should have access to the widest possible choice of investment products as they seek to diversify their investments and to reduce their cost of investing. We believe that certain of the proposed changes in Phase 2 – Second Stage will reduce investor's choice of investment product and strategies and reduce competition in the asset management business thereby potentially increasing costs. We believe that certain of the investor protections under the proposed changes including those relating to investment restrictions and leverage could best be provided through clear prospectus disclosure and continuous disclosure requirements. In addition, if changes are made as proposed in Phase 2 – Second Stage without a grandfathering provision for existing NRFs we believe that there will be significant costs to comply with changes for funds (such as unitholder meeting costs and legal costs). Such changes will also likely cause a significant reduction in current distribution or dividend rates and the trading price of certain NRFs resulting in a significant reduction in the value of investor's assets. The reduction in value would be the result of the CSA changing the investment bargain under which investors' initially purchased a NRF. Certain Funds that will be affected have been successfully operating for over a decade.

Below we address the specific questions of the CSA relating to the proposed amendments that impact NRFs:

Investment Restrictions

Concentration

3. ***Question:*** *We are proposing to raise the concentration limit for alternative funds to 20% of NAV at the time of purchase, meaning the limit must be observed only at the time of purchasing additional securities of an issuer. Should we also consider introducing an absolute upper limit or "hard cap" on concentration, which would require a fund to begin divesting its holdings of an issuer if the hard cap is breached, even passively, which is similar to the approach taken with illiquid assets under NI 81-102? Please explain why or why not.*

Response: We agree with the proposed 20% concentration limit for NRFs at the time of purchase. We do not believe that an absolute upper limit or "hard cap" on concentration should be introduced. If the concentration limit is breached as a result of market volatility, having an absolute upper limit may require an investment fund to sell securities in unfavourable market conditions and forced selling can result in significant undue losses.

Investments in Illiquid Assets

6. ***Question:*** *We are also proposing to cap the amount of illiquid assets held by a non-redeemable investment fund, at 20% of NAV at the time of purchase, with a hard cap of 25% of NAV. We seek feedback on whether this limit is appropriate for most nonredeemable investment funds. In particular, we seek feedback on whether there are any specific types or categories of nonredeemable investment funds, or strategies employed by those funds, that may be particularly impacted by this proposed restriction and what a more appropriate limit, or provisions governing investment in illiquid assets might be in those circumstances.* ***In particular, we seek comments relating to non-redeemable investment funds which may, by design or structure, have a significant proportion of illiquid assets, such as 'labour sponsored or venture capital funds' (as that term is defined in NI 81-106) or 'pooled MIEs' (as that term was defined in CSA Staff Notice 31-323 Guidance Relating to the Registration Obligations of Mortgage Investment Entities).***

Response:
We believe that no limit on illiquid assets is required for NRFs. In general, NRFs are not constrained by the need to maintain certain levels of liquidity required by mutual funds as they generally offer annual redemptions and redemption notice periods of up to 60 days. As a result, NRFs are able to offer different investment strategies for investors and such strategies may include illiquid assets. Indeed, one of the reasons to use a NRF structure is to invest in illiquid asset classes that cannot otherwise be held in a redeemable fund. NRFs may also employ a limited redemption feature to address liquidity concerns. We recognize the risks of investing in illiquid assets and endeavor to structure funds that are able to meet annual redemption commitments. Fund structure, investment objectives, investment restrictions and prospectus disclosure are all subject to an independent due diligence process by independent investment dealers and legal counsel. We believe that additional disclosure requirements for illiquid securities may be warranted. For valuation, NRFs have set up procedures for valuing illiquid assets which include evaluations by independent audit firms on at least an annual basis.

In particular, the current proposed limits will likely prohibit the issuance of investment funds that invest in flow-through shares ("Flow-Through Funds). Many of the flow-through shares that are purchased by Flow-Through Funds are offered by private placement which carry a 4-month hold period and as a result are considered illiquid assets until the hold period is complete. Flow-Through Funds are designed to provide tax benefits for investors and have been offered for well over a decade.

In addition, the current definition of illiquid assets requires "public quotations in common use" in order for an asset to be considered a liquid asset. We suggest that the definition of "public quotation" be updated to cover all debt securities instead of only fixed income securities to recognize the well-established floating rate loan markets. We suggest the new definition to read: *"public quotation" includes, for the purposes of calculating the amount of illiquid assets held by an investment fund, any quotation of a price for a debt security made through the inter-dealer market.*

7. ***Question:*** *Although non-redeemable investment funds typically have a feature allowing securities to be redeemable at NAV once a year, we also seek feedback on whether a different limit on illiquid assets should apply in circumstances where a nonredeemable investment fund does not allow securities to be redeemed at NAV.*

   Response: Flow-Through Funds have no redemption feature and invest in flow-through shares to obtain tax benefits. For funds that do not offer a redemption feature, we believe there should be no limit on illiquid assets as there is no immediate need for liquidity.

Borrowing

8. ***Question:*** *Should alternative funds and non-redeemable investment funds be permitted to borrow from entities other than those that meet the definition of a custodian for investment fund assets in Canada? Will this requirement unduly limit the access to borrowing for investment funds? If so, please explain why.*

   Response: Phase 2 – Second Stage proposes to only permit alternative funds and NRFs to borrow from entities that meet the definition of a custodian for investment fund assets in Canada. The effect of this restriction would be to significantly limit the sources of financing for NRFs, which would have the likely effect of reducing liquidity and increasing the cost of financing and ultimately the cost to investors. It is unclear whether this proposed change is meant to address a perceived risk associated with foreign lenders or Canadian lenders that are not financial institutions. In any event, if a fund is complying with the terms of the borrowing there should be no issue. If a fund is in breach, the terms of the loan agreement and related security will govern the rights of the parties. In a breach scenario it would be expected that the behavior of the lender will be the same whether it is a Canadian or foreign bank or financial institution. In all cases, the lender will attempt to enforce its rights under the applicable loan and security agreements. We propose that lenders be lenders that are subject to regulatory oversight within their country of business to provide assurance that their lending arrangements are offered on competitive commercial terms.

   We do not believe that restricting the use of borrowings and leverage by NRFs is appropriate or necessary to ensure that the regulatory approach with respect to NRFs continues to adequately protect investors. The current framework is appropriate as the level and type of leverage for a given NRF is highly subjective and should be based on the determination of the asset class and applicable market participants. Phase 2 – Second Stage proposes no such difference and imposes an arbitrary 50% of NAV limit for borrowings. At this level, at least 2 of the NRFs managed by Brompton may exceed the 50% limit. These 2 funds both invest in debt securities that generally have less volatility than equity securities and are focused on fixed or floating income asset classes. We believe that NRFs should not be limited as to the percentage of borrowings as they are not constrained by the daily redemption requirements of a mutual fund and generally offer annual redemptions. NRFs also often provide for a redemption notice period of up to 60 days to permit adequate time to liquidate its portfolio on an orderly basis. As a result, NRFs are able to manage higher levels of leverage. In addition, the NRF structure, investment strategies and investment restrictions have been subject to the review of independent investment dealers to ensure that NRFs and their assets have manageable levels of leverage. NRFs are also able to obtain financing at more favourable interest rates than retail investors and we believe that a lower leverage limit will reduce investor choice.

NRF investors are also assisted by industry professionals who are required to do a suitability analysis. We believe that NRF investors who have the benefit of full, true and plain disclosure and the advice of registered advisors working in the investment dealer channel should enjoy access to a broad choice of investment strategies. Concerns that the CSA may have with respect to leverage should be addressed through enhanced disclosure. We agree with the additional Leverage Disclosure Requirement proposed by the CSA in the Phase 2- Second Stage.

Another point which we believe the CSA should consider for future revisions to National Instrument 81-106 is the calculation of the management expense ratio ("MER") as it applies to NRFs that employ borrowings. Currently the calculation of the MER requires the inclusion of interest expense which increases the MER. However, interest expense is not a management expense if the NRF is borrowing as part of the investment strategy to enhance income or returns. However, as NI 81-106 is currently drafted, the calculation of the MER that is disclosed in the Financial Highlights table does not consider that the borrowings employed as part of the investment strategy that generated the interest expense may have generated additional income (often income is well in excess of the interest expense) or returns that benefits investors of the NRF thereby reporting a confusing, one-sided calculation. We don't see how the current calculation assists investors or advisors in understanding how leverage is used in the NRF, and we believe it causes unnecessary confusion. We would propose that interest expense relating to investment activities and other similar financing costs be excluded from the calculation of MER as we believe that this would provide a better representation of the ongoing operating costs of a NRF.

Total Leverage Limit

9. ***Question:*** *Are there specific types of funds, or strategies currently employed by commodity pools or non-redeemable investment funds that will be particularly impacted by the proposed 3 times leverage limit? Please be specific.*

Response: It is not unusual for NRFs to employ investment strategies that borrow cash to invest, hedge foreign currency or hedge other risks such as interest rate risk. Fixed income based investment strategies may use these three investment tools. The combination of these activities could cause the 3 times leverage limit to be exceeded, yet interest rate and currency hedging is intended to lower risk and we would be prevented from doing so. As a result, the 3 times limit effectively reduces the ability of a fund to hedge risks which would be detrimental to investors.

10. ***Question:*** *The method for calculating total leverage proposed under the Proposed Amendments contemplates measuring the aggregate notional amount under a fund's use of specified derivatives. Should we consider allowing a fund to include offsetting or hedging transactions to reduce its calculated leveraged exposure? Should we exclude certain types of specified derivatives that generally are not expected to help create leverage? If so, does the current definition of "hedging" adequately describe the types of transactions that can reasonably be seen as reducing a fund's net exposure to leverage?*

Response: In the event that a leverage limit is implemented which includes derivatives then we believe that specified derivatives that are used for hedging should be excluded from the leverage calculation. These specified derivatives are not used to create leverage rather they are used to reduce certain risks. In addition, the proposed leverage calculation includes the aggregate notional amount of specified derivatives which does not consider the fact that notional amounts of

certain derivatives may partially offset each other, ie., the fund may enter in to a subsequent derivative position to offset an initial position due to changes in risk exposures; however, the leverage calculation would increase the aggregate notional amount and as a result the leverage even though derivative positions have been partially offset.

The current definition of "hedging" in NI81-102 adequately describes these types of transactions.

11. ***Question:*** *We note that the proposed leverage calculation method has its limits and its applicability through different type of derivatives transactions may vary. We also acknowledge that the notional amount doesn't necessarily act as a measure of the potential risk exposure (e.g. interest rate swaps, credit default swaps) or is not a representative metric of the potential losses (e.g. short position on a futures), from leverage transactions. Are there leverage measurement methods that we should consider, that may better reflect the amount of and potential risk to a fund from leverage? If so, please explain and please consider how such methods would provide investors with a better understanding of the amount of leverage used.*

Response: As addressed in our response to question #10, we believe, at the very least, the notional amount of derivatives used for hedging should not be included in the total leverage calculation. Further, we do not believe that restricting the use of borrowings and leverage by NRFs is appropriate or necessary to ensure that the regulatory approach with respect to NRFs continues to adequately protect investors. We believe that additional disclosure would provide investors with a better understanding of the impact of the use of borrowings or short selling or derivatives and as a result make even more informed investment decisions. Such disclosure could include: (i) the sensitivity in changes to net asset value as a result of the use of borrowings or short selling or derivatives; and (ii) the identification of hedging related derivatives and an explanation of the risks and how such derivatives hedge those risks.

12. ***Question:*** *We seek feedback on the other Interrelated Investment Restrictions and particularly their impact on non-redeemable investment funds. Are there any identifiable categories of non-redeemable investment funds that may be particularly impacted by any of the Interrelated Investment Restrictions? If so, please explain.*

Response: Phase 2 – Second Stage proposes that, for both alternative funds and NRFs, to limit the mark-to-market exposure with any one counterparty to 10% of NAV. NRFs often use specified derivatives for hedging purposes and may hedge the currency risk up to 100% of the portfolio value. Funds may obtain better terms if the derivatives are entered into with one counterparty instead of separating them among various counterparties. If a Fund needs to terminate a derivative contract early due to its mark-to-market exposure being above the 10% limit and then to re-enter into the contract, it will then incur a cost due to the bid-ask spread. We understand that this limit is to counterbalance the exemption of NRF to be prohibited from entering into specified derivatives with counterparties that do not have a "designated rating" as defined in NI81-102. We suggest the 10% mark-to-market exposure limit with one counterparty exclude specified derivatives that are entered with a counterparty that has a "designated rating".

Transition

16. ***Question:*** *We are seeking feedback on the proposed transition periods under the Proposed Amendments and whether they are sufficient to allow existing funds to transition to the updated regulatory regime? Please be specific.*

Response: We believe that grandfathering and continuation of exemptive relief should be granted to existing NRFs under Phase 2.

We believe that a 6-month transition period for existing NRFs is not appropriate as the proposed amendments are inconsistent with the investment decision made by investors and their legitimate expectations or the commercial decision made by the investment fund manager in launching the fund. Neither investors nor fund managers should be forced into paying for amendments that are inconsistent with the investment bargain that was entered into at the time of investment; and the costs and disruption associated with a requirement to transition could be significant for NRF managers and investors. Amending fund documents, obtaining securityholder approvals, if required, and the associated notice and continuous disclosure requirements would be extremely difficult. Many issues are also raised, for example, tax implications of realigning portfolios, impact on trading of NRF securities and the possibility that investors do not approve changes. The proposed borrowing limits would immediately impact two Brompton funds and cause the reduction of distributions and likely the trading price of such funds. The grandfathering of all existing NRFs will lead to the least confusion and inequity for investors and all other market participants. In addition, the existing NRFs should be able to continue to increase their assets through follow-on offerings so that the Funds can continue to improve liquidity for their investors and to lower or improve the management expense ratios.

We believe that changes proposed in Phase 2 – Second Stage will likely require securityholder meetings. Changes that generally require securityholder meetings include: (i) changes to the investment objectives; (ii) changes to the investment strategies or guidelines; and (iii) changes to the investment restrictions. The costs of securityholder meetings are estimated at $75,000 per NRF which would translate into approximately $150,000 in costs to be borne by Brompton's NRFs and indirectly investors.

Conclusion

Phase 2 – Second Stage, while reflecting certain comments and concerns submitted by market participants in 2013, will still have a negative impact on investors and on an industry which we believe has functioned very well under the current regulatory regime. The industry is a highly regulated and stable one. While different, there is nothing to suggest that their construction, distribution process, management, performance or regulatory framework are inferior to that in respect to mutual funds.

We believe that the NRF market is working well and the major investment dealers have a robust risk rating and approval process under which NRF offerings are reviewed. These offerings are reviewed by experienced market professionals with respect to disclosure, risk and suitability for investors. We understand that NRFs must undergo an underwriting committee process before a major investment dealer firm will support a public offering and specific terms such as leverage and the use of derivatives as well as disclosure concerning the NRFs ability to pay indicated distributions are carefully reviewed. We believe investment dealers and the investment fund managers who have prospectus liability and risk as to

reputation and relationships for these products have been effectively supervising and imposing key terms for the benefit of the market and investors.

We look forward to working with you on this initiative.

Yours truly,

//Signed// *"Mark A. Caranci"*
Mark A. Caranci
President & Chief Executive Officer

//Signed// *"Craig T. Kikuchi"*
Craig T. Kikuchi
Chief Financial Officer