

August 23, 2013

DELIVERED BY EMAIL

Mr. John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
E-mail: comments@osc.gov.on.ca

Ms. 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
E-mail: consultation-en-cours@lautorite.qc.ca

Dear Sir and Madam:

Re: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 81-102 – *Mutual Funds*, 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*

TMX Group Limited welcomes the opportunity to comment on behalf of Toronto Stock Exchange (“**TSX**” or the “**Exchange**”) on the CSA Notice and Request for Comment – Proposed Amendments to National Instrument 81-102 – *Mutual Funds*, 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* (the “**Request for Comment**”) published by the Canadian Securities Administrators (“**CSA**”) on March 27, 2013.

Further to CSA Staff Notice 11-324 – Extension of Comment Period to Proposed Amendments to National Instrument 81-102 – *Mutual Funds*, 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*, we note the extension of the comment period to August 23, 2013 and the emphasis on certain of the Proposed Amendments to National Instrument 81-102 which are not directly tied to the alternative fund framework.

TSX is generally supportive of the CSA's efforts to modernize the regulatory framework applicable to investment funds. More particularly, TSX supports the Proposed Amendments that will enhance and strengthen the governance of investment funds such as the provisions relating to conflicts of interest, securityholder and regulatory approval of fundamental changes and additional securityholder approval requirements. We believe that non-redeemable investment funds should consistently be required to obtain securityholder and regulatory approval for fundamental changes. In 2010, the Exchange introduced certain securityholder approval requirements for mergers of investment funds in order to partially address consistency concerns regarding securityholder approval. Since such provisions currently may vary from fund to fund, we believe that the proposals regarding fundamental changes will be beneficial to securityholders and represent a positive change for the industry and the marketplace.

We do have concerns that certain of the Proposed Amendments may have unintended consequences on non-redeemable investment funds that may negatively impact investment opportunities available to Canadian investors. We have outlined the concerns below.

All capitalized terms have the same meanings as defined in the Request for Comment unless otherwise defined in this letter.

1. Product innovation and investor choice in the Canadian market.

As noted by the CSA in the Request for Comment, non-redeemable investment funds are not new in the market; rather, these products have evolved as a result of innovation in the industry and changes in the economic and regulatory landscape. The Exchange views the introduction of new investment products as generally beneficial to investors and the Canadian capital markets. The current regulatory system provides strong regulatory oversight and investor protection while promoting diverse and innovative investment fund products, allowing investors to choose what is suitable for their needs. In our role as the senior exchange operator in Canada, we support investors having diverse investment options, supported by appropriate disclosure and regulation.

The Exchange understands that non-redeemable investment funds have been structured to appeal to certain investors with an appetite for higher yields and regular monthly or quarterly distributions. To attain these objectives, fund managers use investment strategies that may include exposure to various forms of leverage and illiquid assets to generate stable cash flow, as well as to reduce volatility and risks.

The Proposed Amendments aim to limit the use of illiquid assets by non-redeemable investment funds as well as impose other funding, borrowing and investment restrictions. We believe that the adoption of such limits and restrictions may impede the ability of non-redeemable fund managers to structure products that will continue to appeal to investors. Moreover, these restrictions may also stifle product innovation and the availability of diverse investment products to Canadian investors. TSX believes that emphasis on disclosure of a fund's

features and investment strategies, together with related risks, is preferable to restricting the investment strategy and amount of leverage permitted to be used by funds.

Our general preference with respect to organizational costs, as well as other matters in the Request for Comment, is to ensure that there is fulsome disclosure which allows investors to make an informed investment decision, rather than prohibiting the fund to bear the organizational costs which may ultimately limit investment opportunities. In our view, enhanced disclosure enables educated, informed investment decisions, while maintaining product differentiation and choice for investors in the Canadian capital markets. We acknowledge the CSA's concern that, in some cases, managers have launched mutual funds without paying any organizational costs by creating a non-redeemable investment fund and then converting into a mutual fund after a short period of time. To address the CSA's specific concern, we encourage the CSA to consider a more tailored strategy to prevent circumvention of the mutual fund rules. As we are otherwise unclear as to the impetus behind the proposed prohibition on recouping operational costs, we believe that the current proposal may unnecessarily impact all non-redeemable investment funds.

2. Policy reasons to differentiate between non-redeemable investment funds and mutual funds.

The Exchange has reviewed the feedback received by the CSA on Staff Notice 81-322* and agrees with certain commenters that investment restrictions similar to those contained in Part 2 of NI 81-102 for non-redeemable investment funds will eliminate the primary distinction between mutual funds and non-redeemable investment funds. The flexibility given to non-redeemable investment funds to use alternative investment strategies has afforded investors exposure to innovative structures and different asset classes. The Exchange believes that, absent specific concerns regarding non-redeemable investment funds, it is beneficial to the Canadian capital markets to preserve investment product choice.

In the Request for Comment, the CSA state that the differences between non-redeemable investment funds and mutual funds do not provide a sufficient policy basis to exempt non-redeemable investment funds from NI 81-102 which promotes investor protection, passive investment and prudent fund management*. The Exchange believes, however, that there are some differences between non-redeemable investment funds and mutual funds which are relevant from a policy perspective.

Unlike mutual funds, non-redeemable investment funds do not have an on-demand redemption feature. The absence of this feature allows non-redeemable investment funds to use leverage and invest in illiquid assets since they do not have to fund daily T+3 redemption demands. Non-redeemable investment funds only need to have sufficient cash on hand to fund redemptions once a year. Non-redeemable investment funds therefore have weeks to unwind

* Page 2 of the Request for Comment.

positions or to liquidate assets to generate sufficient cash to meet redemptions. Non-redeemable investment funds can therefore use assets such as senior loans which tend to be more illiquid.

Exchange listed non-redeemable investment funds provide liquidity to investors through the secondary market, in addition to the annual redemption feature and in lieu of the daily redemptions of mutual funds. Secondary market liquidity also mitigates investor risk related to exposure to less liquid assets. Liquidity provided by a stock exchange also allows investors to buy or sell non-redeemable fund securities with better price discovery compared to mutual funds investors buying or selling at end-of-day NAV. We believe that this is potentially an attractive feature of non-redeemable investment funds that is unavailable to mutual fund investors.

The Exchange notes that non-redeemable investment funds are subject to more scrutiny than mutual funds. A non-redeemable investment fund produces a long-form prospectus describing the securities to be distributed as well as the various investment strategies that may be used by fund managers. The prospectus is reviewed by the underwriters and external legal counsel for both the non-redeemable investment fund and the underwriters. Underwriters conduct due diligence and incur liability associated with the disclosure provided in the prospectus and, when distributing such securities, are subject to “know your client” rules.

The differences in investment strategies, liquidity profile and distribution channels between mutual funds and non-redeemable investment funds are significant and, we believe, sufficient to distinguish mutual funds from non-redeemable investment funds and to warrant different regulatory treatment, rather than attempting to “level the playing field” between these two types of investment products.

3. Further information is required to assess the Proposed Provisions.

The Request for Comment does not appear to clearly identify the core risks and inherent problems with non-redeemable investment funds the CSA are seeking to address by introducing certain of the Proposed Provisions, especially those restricting the investment strategy and amount of leverage permitted to be used by funds. As an exchange operator, we are not aware of any issues, policy or investor protection concerns specific to non-redeemable investment funds in respect of the use of illiquid assets and various forms of leverage. As we believe that the Proposed Provisions may have a significant impact on the investment fund industry, investors and the Canadian capital markets, we would like to gain a better understanding of the CSA’s concerns related to the use of leverage and less liquid assets by non-redeemable investment funds.

4. Development of Alternative Fund Framework.

We understand that, based on comments received by the CSA through this process, the detailed alternative fund framework will be published for public comment. We look forward to the opportunity to provide our feedback.

We understand that investment funds may be able to continue using their current investment strategies under an alternative fund framework. However, in the absence of details of the alternative fund framework, TSX has certain concerns about the impact such a framework may have on the Canadian market. For instance, investors have made their investment decisions based on the non-redeemable investment fund's objectives, which could be fundamentally altered as a result of the implementation of the alternative fund framework. We encourage the CSA to consider an alternative fund framework which will continue to allow product innovation by focusing on disclosure, rather than on the imposition of investment restrictions.

This creates a high degree of uncertainty in regards to the ability of non-redeemable investment funds to transition to a new regime in a cost efficient manner and orderly fashion while preserving their investment objectives. Non-redeemable investment funds may have to incur significant costs and compromise their investment profile by having to modify and restrict their investment strategies to comply with the Proposed Provisions until the alternative fund framework is available.

TSX believes that it is important to consider the Proposed Provisions that relate to NI 81-102 that will impact the alternative fund framework in tandem. This will allow industry participants and other stakeholders to consider the regulatory framework for investment funds in a holistic and cohesive manner.

Thank you for the opportunity to comment on the Request for Comment and on the Proposed Provisions. Should you wish to discuss any of the comments with us in more detail, we would be pleased to respond.

Yours truly,



Ungad Chadda
Senior Vice President
Toronto Stock Exchange