



RBC Capital Markets®

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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 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 Territory
Superintendent of Securities, Nunavut

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
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 Comments Modernization of Investment Fund Product Regulation –Alternative Funds

This letter is being submitted on behalf of RBC Capital Markets in response to the CSA Notice and Request for Comment published on September 22, 2016 concerning the Modernization of Investment Fund Product Regulation – Alternative Funds. RBC Capital Markets is supportive of the proposed changes regarding phase 2 of the modernization of investment fund product regulation. We are including comments on those provisions that we believe require further clarification or changes in order to better align with industry practice.

Entities Qualified to Act as Custodian

While we understand it is the OSC's view that Prime Brokers fall within the scope of section 6.2 of NI 81-102, we note that Prime Brokers do not meet all the requirements set out in Part 6. In particular, Prime Brokers may not have the intra-company infrastructure in place for an affiliated bank or trust company to assume responsibility for all of the custodial obligations of the broker dealer in order to meet the definition of a "custodian" under section 6.2 (3). In addition, Prime Brokers are not set up to meet the review and compliance reporting requirements set out

under section 6.7 of Part 6. Consequently, we would suggest that Prime Brokers be exempt from meeting the requirements set out in these sections.

Currently, alternative funds may use a Prime Broker to hold their assets and to provide borrowing and short selling facilities. These funds do not need to use custodians to conduct this business. If this is changed to require alternative funds and non-redeemable funds to use a custodian in addition to a Prime Broker, this will result in additional costs and will require the alternative fund and/or non-redeemable fund to develop and establish additional operational infrastructure. This may deter some alternative funds and non-redeemable funds from issuing securities pursuant to NI81-102. The incremental cost to add a custodian will be especially prohibitive for smaller and early stage funds, and is likely to impact fund performance and impede the growth of these entities.

Question 8 – Borrowing

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.

Alternative funds and non-redeemable funds should be permitted to borrow from entities that qualify as borrowing agents in addition to custodians. Currently, alternative funds are able to borrow cash and both alternative funds and non-redeemable funds are able to short sell securities through a single margin facility established with their Prime Broker. This provides alternative funds and non-redeemable funds with an operationally and cost efficient method of borrowing cash and / or short selling securities as both may be done utilizing the same portfolio margin facility. If alternative funds and non-redeemable funds are restricted to borrowing from custodians only, this will limit these funds' access to borrowing facilities and may increase their borrowing costs; i.e. charges for standby credit facilities, higher borrowing rates, etc. Under the proposed amendments to section 6.8, alternative funds may be required to have multiple counterparties with at least one for each type of borrowing (cash, securities), which may increase operational risk and deter some alternative funds and non-redeemable funds from issuing securities pursuant to NI81-102. As noted above, the current practice of alternative funds and non-redeemable funds is to deposit fund assets as margin/security with a Prime Broker to cover their borrowing and / or short selling securities activity. If "borrowing" were included in 6.8.1 of NI81-102, rather than 6.8, alternative funds and non-redeemable funds will be able to continue this practice and the above risks will be mitigated.

Custodial Provisions

Alternative or non-redeemable funds should be allowed to deposit sufficient collateral with the borrowing agent as security against the borrow amount up to a new maximum of 50% of NAV for borrowing and / or short selling of a security.

The custodial provisions in sections 6.8 (2)(c) and 6.8.1 (1) relating to the maximum amount of portfolio assets deposited with a borrowing agent have not been amended to include the new borrowing and / or short selling limit for alternative and non-redeemable funds. The current portfolio asset deposit limit of 10% would be insufficient to satisfy a margin requirement with the borrowing agent when the allowable borrowing is 50%. Further, section 6.8.1(1) should be clarified to say that the proceeds from a short sale (or equivalent value) may be deposited with the Prime Broker/borrowing agent as margin/security [against the alternative fund's or non-redeemable fund's total net exposure to the Prime Broker/borrowing agent and] for the short sale of a security. That is, at the time the short sale proceeds are deposited into the alternative fund's or non-redeemable fund's account, the value of the short sale proceeds is netted with the value of the short sale security and this amount is excluded from the value of the alternative fund's or non-redeemable fund's assets on deposit with the Prime Broker/borrowing agent, subject to

the deposit limit. By way of background, the margin requirement on an equity security sold short position would be 150% of the market value which is calculated as 100% of the market value (i.e. the proceeds from the sale) plus 50% margin required.

Consequently, we propose that alternative and non-redeemable investment funds be allowed to deposit sufficient collateral with the Prime Broker/borrowing agent as security against the borrowing and / or short selling based on current regulatory margin rates for IIROC broker dealers and that short sale proceeds be included as eligible margin for this purpose.

We appreciate the opportunity to provide comments and welcome the opportunity to discuss the foregoing with you in further detail. If you have any questions or require further information, please do not hesitate to contact the undersigned.

“Andrew Thornhill”

Andrew Thornhill
Managing Director, Equity Finance and Prime Brokerage