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January 16, 2024

Delivered by 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
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

Me Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
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Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment
***Proposed Amendments to National instrument 81-102 Investment Funds* (NI 81-102) published for comment on October 19, 2023 (the Amendments)**
Comments of the Investment Management Group of Borden Ladner Gervais LLP

We are pleased to provide the members of the Canadian Securities Administrators (**CSA**) with comments on the above-noted Amendments. Our comments are those of the individual lawyers in the Investment Management practice group of Borden Ladner Gervais LLP listed below, and do

not necessarily represent the views of BLG, other BLG lawyers or our clients.

Support for IFIC Comments

The Investment Funds Institute of Canada (**IFIC**) submitted its comment letter regarding the Amendments. We support IFIC's comments and recommendations. In particular, in its letter, IFIC recommends that the CSA incorporate amendments to the Companion Policy to NI 81-102 (**81-102CP**) to include guidance on how to satisfy the requirement of the proposed Section 9.4(a)(0.1) to disclose "in writing" the reference settlement date of a fund to the fund's principal distributor, participating dealer or a person or company providing services to the principal distributor or participating dealer. IFIC endorses two options to satisfy this requirement: (1) delivering this disclosure via Fundserv through the FD file, any other Fundserv file or otherwise, and (2) disclosing the reference settlement date on the mutual fund's "designated website". We support these two options and the draft wording for 81-102CP proposed in IFIC's letter, and we encourage the CSA to incorporate IFIC's recommendations into the Amendments.

T+3 Exemptive Relief Decisions

With the Amendments, we would also encourage the CSA to take the opportunity to affirm the continued applicability of the relief from sections 9.4 and 10.4 of NI 81-102 granted in *AGF Investments Inc. et al.*, Re 44 OSCB 3954 and similar decisions (the **T+3 Relief**), which permits certain exchange-traded funds (**ETFs**) that invest in T+3 securities to continue to settle primary trades of ETF securities three days after the trade date.

The T+3 Relief was granted on the condition that a fund relying on the relief must disclose in its prospectus that the settlement cycle for primary market trades in securities of the fund is T+3, while "the settlement cycle for primary market trades in Units of the Fund differs from the settlement cycle of T+2 for secondary market trades in Units of the Fund".

Effective May 27, 2024, the settlement cycle for secondary market trades in securities of ETFs will no longer be T+2 but rather, will transition to T+1 settlement. Accordingly, it will not be possible for a fund that relies on the T+3 Relief to adhere with strict compliance to the condition of the decision summarized above, since the settlement cycle for secondary market trades in the fund's securities will no longer be T+2 and therefore this cannot be disclosed in the fund's prospectus, and any existing disclosure to this effect will have to be revised once the prospectus is renewed.

The need for the T+3 relief stemmed from amendments to NI 81-102 requiring primary market trades of securities of funds subject to NI 81-102 to move to T+2 settlement from T+3 settlement. ETFs that invest in T+3 securities would have difficulty settling primary market trades of the ETFs' securities on T+2, and accordingly relief was sought to keep the primary market trades of such ETF securities on T+3 settlement. The relief did not modify the settlement timing for secondary market trades in ETF securities – secondary market trades in ETF securities settled on T+2. There is no policy rationale as to why the T+3 Relief should no longer be available to funds that currently rely on it in an environment in which secondary market trades in ETF securities settle on T+1. Additionally, the move to T+1 settlement of North American securities, including ETF securities, will not alleviate the need for the relief for ETFs that invest in T+3 securities.

The issue created for ETFs that rely on the T+3 Relief with the migration to T+1 settlement of secondary market trades in ETF securities is strictly an issue of technical compliance. It would give the investment fund managers that currently rely on the T+3 Relief great comfort for the CSA to acknowledge that, despite no longer being able to technically comply with the portion of the relief's

conditions set out above, the CSA's view is that the relief can still be relied on provided that a fund relying on the relief provides prospectus disclosure that the settlement cycle for primary market trades in units of the fund differs from the settlement cycle for secondary market trades in units of the fund. Further, we urge the CSA to give the industry comfort that varied relief does not need to be sought.

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Thank you for the opportunity to provide our comments on the Amendments.

Please contact Whitney Wakeling [redacted] if you have any questions on our comments or wish to meet with us to discuss any or all of our comments.

Yours very truly,

Borden Ladner Gervais LLP

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Donna Spagnolo

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