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December 13, 2018

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 of 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  
22<sup>nd</sup> Floor, Box 55  
Toronto, Ontario  
M5H 3S8

Me Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, square Victoria, 22<sup>e</sup> étage  
C.P. 246, tour de la Bourse  
Montréal, Québec  
H4Z 1G3

Dear Sirs/Mesdames:

**RE: Proposed Amendments to National Instrument 81-105 (Mutual Fund Sales Practices) and Related Consequential Amendments**

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AGF Investments Inc. ("**AGF**") is writing to provide comments in respect of the Canadian Securities Administrators' ("**CSA**") Notice and Request for Comment: *Proposed Amendments to National Instrument 81-105 Mutual Fund Sales Practices* ("**NI 81-105**"),



and Related Consequential Amendments, as published on September 13, 2018 (referred to herein as the "**Proposed Amendments**").

AGF provides asset management services globally, and its suite of investment solutions extends to a wide range of clients, from financial advisors and individual investors to institutional investors including pension plans, corporate plans, sovereign wealth funds, endowments and foundations. AGF's products include a diversified family of mutual funds, exchange traded funds, mutual fund wrap programs and pooled funds. AGF is registered in the categories of Investment Fund Manager, Mutual Fund Dealer, Exempt Market Dealer, Portfolio Manager, and Commodity Trading Manager.

Although institutional clients may purchase AGF mutual funds directly from AGF, AGF predominantly distributes these funds through unaffiliated dealers for its retail investment fund business. As a result, AGF has direct experience with the challenges facing independent mutual fund managers as they seek to offer their products on the shelves of third-party dealers to provide access to such products to Canadian investors. Further, due to AGF's experience with working with dealers of all sizes, AGF has a meaningful understanding of the consequences of the Proposed Amendments on dealers, advisers, and investors.

AGF appreciates the opportunity to provide feedback to the CSA on the matters raised in the Proposed Amendments. AGF's fundamental concerns with respect to both sets of proposals under the Proposed Amendments are articulated below.

#### **A. CSA's Proposals re: DSC Purchase Option**

AGF is fundamentally concerned with the CSA's proposed prohibition on the payment of upfront sales commissions (under NI 81-105) and the resulting discontinuance of all forms of the deferred sales charge ("**DSC**") payment option. Moreover, in alignment with the Investment Funds Institute of Canada ("**IFIC**") response letter to the Proposed Amendments, AGF firmly believes that there remains a role for the DSC purchase option within the Canadian investment landscape.

In the context of enhanced investor protection, the CSA is purporting to curtail the prevalent and useful tool of investors being able to rely on fund managers to compensate such investors' dealers and advisers for mutual fund sales through the use of upfront commissions. AGF respectfully submits that the CSA's presumption of invoking a protectionist view in this area may not be completely founded in corresponding investor sentiment. To support this assertion, AGF puts forth the findings of a 2018 Report from the Gandalf Group<sup>1</sup> (the "**2018 Gandalf Report**"). Within the Gandalf Report, most investors (62%) said they believe DSCs are an acceptable way of compensating financial advisors for the service and sales they provide to investors. In fact, only 20% of investors specifically

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<sup>1</sup> "2018 Canadian Investor Survey: An Opinion Research Study on Advisor Compensation & Mutual Fund Purchase Options" (December 12, 2018) by The Gandalf Group. This third-party survey, as conducted by The Gandalf Group (a Toronto-based consultancy firm that specializes in survey research), was completed by 1102 Canadian investors, and was commissioned by AGF.



referenced such form of payment as being unacceptable. Further, those investors who recalled purchasing a fund with a DSC were more likely than others to say they were acceptable (74%), and those who recalled actually paying a DSC were especially likely to say that such commissions were acceptable (84%).

AGF urges the CSA to consider the harm that elimination of the DSC purchase option would have on investors with smaller accounts/investors who are at the nascent stages of investing. AGF concurs with IFIC's statement that investors with small amounts to invest on a regular basis and who want personalized investment advice continue to be well-served by the DSC purchase option; and that it would be an unusual regulatory outcome to make it more costly for smaller investors to invest on a regular basis.

AGF also re-emphasizes a point that it recently made in relation to its comments on the Client Focused Reforms (Proposed Amendments to National Instrument 31-103): the notion that smaller investors can be serviced through other means, namely online tools like robo-advice or self-directed platforms, until such a time that their wealth justifies – or meets the minimum requirements of – an advisor, is fundamentally mistaken. This is markedly apparent in the following statement from the 2018 Gandalf Report:

*"While some investors have opted not to work with an advisor, the large majority of investors - 8 in 10 - continue to, including most of those who are also using robo-advice services. Among that large majority, very few are dissatisfied with the time and advice they receive. They tend to be moderately satisfied with what they pay in fees but only about 1 in 10 are very dissatisfied with those fees; and fees are arguably not the component of the value proposition that investors most want from advisors. They expect advice and service as well as trust. While there is room for improvement, most are very satisfied with the transparency of their advisors when it comes to their compensation. They are even more satisfied when it comes to the time and unbiased advice they are receiving. The clear majority believe their advisors care about how their portfolios perform."*

Preserving the integrity of investor choice should be a key tenet for the CSA in determining how best to act in the face of implied investor protection and market efficiency issues. As illustrated in the 2018 Gandalf Report, a clear majority of all investors at least somewhat agreed that advisors should have the option of offering funds with a DSC. Moreover, an even larger majority agreed that DSCs are a good option for those who are just embarking upon their investment horizon. This clearly demonstrates that limiting investors' choice is ultimately not what investors want, and not what is in their best interests.

As it relates to redemption fees payable by investors within a DSC schedule, AGF does not believe that investors are unfairly prejudiced with regard to their investment time horizons. In contrast, AGF agrees with IFIC's assessment that: (i) investors have the ability to switch out of a fund to another fund within the same fund family without being subject to any redemption; (ii) investors can redeem 10% of their investment annually with no redemption fee; and (iii) the potential payment of a redemption fee can have the positive effects of encouraging investment discipline, and discouraging impulsive reactions to market volatility.

**In view of the foregoing, and in concurrence with IFIC's proposed approach, AGF strongly urges the CSA that its focus should not be on banning upfront commissions (and, as a**



result, all forms of the DSC purchase option). Instead, the CSA should re-focus its efforts toward establishing a specific set of best practices, including more formally adopting those set out in MFDA Bulletin #0670-C, in relation to the contextual suitability of dealers/advisers recommending the DSC purchase option. Investors' time horizons, age and liquidity needs will most certainly be the important factors for consideration in developing appropriate DSC suitability guidance in a regime governed by a trusting advisor-client relationship. The CSA can then look to ensuring that DSC, as a viable purchase option, is used in an effective, and compliant, manner – all as a means of preserving investor choice, investor protection and market efficiency.

### **B. CSA's Proposals re: Order-Execution-Only Trailing Commissions**

AGF's concerns regarding the proposed prohibition of trailing commission payments made by fund managers to dealers who do not make a suitability determination (such as order-execution-only ("OEO") dealers) stem from the onerous nature of the expectations being imposed on fund managers. As stated by IFIC, AGF concurs that placing a prohibition on investment fund managers is inconsistent with their obligations under the current regulatory framework (which is currently limited to providing full, true and plain disclosure in the offering documents of mutual funds). Moreover, the responsibility for determining which series (and resulting trailing commissions) are appropriate to make available to investors must reside with dealers – not fund managers. AGF, as a fund manager, does not have the direct relationship with investors, and correspondingly should not bear the onus of ensuring that such investors are suitably invested in any one particular series.

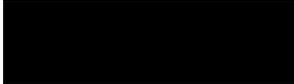
In addition, AGF echoes the assertion presented by IFIC that it is not possible for investment fund managers to know with certainty whether an order from a dealer is in respect of an investor for whom the dealer does not make a suitability determination. Some dealers use separate codes for OEO dealers, whereas other dealers use a single dealer code for multiple affiliated dealers. This results in aggregating mutual fund orders for full service dealers with orders for OEO dealers. To therefore require fund managers to presume the obligation to ensure no payments of trailing commissions to OEO dealers would be to unfairly impose a standard of liability that is not commensurate with fund managers' responsibilities.

As it may relate to the CSA's consideration of mandating the creation of a separate series for each mutual fund for the OEO channel, AGF re-emphasizes its previous assertion (from its 2013 response letter to CSA Discussion Paper 81-407 – *Mutual Fund Fees*) that such action would prove to be a costly requirement for investment fund managers. New series, just like new mutual funds, require launch and ongoing operating costs that need to be rationalized against projected asset levels. This ensures that costs can be managed adequately at reasonable levels. Therefore, a series with very low assets is simply not economically efficient for both a fund manager or for the investor, barring some form of subsidy. Consequently, AGF re-submits that the adoption of a discount "do-it-yourself" series specifically for each mutual fund, or the imposition of a direct to investor distribution model on a mutual fund manager, should remain an optional choice for mutual fund managers.



We thank the CSA for the opportunity to raise the above issues in relation to the Proposed Amendments. Stakeholder responses in relation to the Proposed Amendments should undoubtedly be considered in relation to all of the other CSA initiatives that will have a collective and impactful outcome on the industry. As always, AGF continues to promote sound regulatory change that is grounded in the needs and preferences of all investors.

Yours very truly,



Mark Adams  
Senior Vice President, General Counsel & Corporate Secretary  
AGF Investments Inc.