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Delivered by Email

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
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
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

The Secretary
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comments@osc.gov.on.ca

Me Anne-Marie Beaudoin, Corporate Secretary
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Dear Sirs/Mesdames:

**Re: CSA Notice and Request for Comment - Proposed National Systems
Renewal Program Rule and Related Amendments
CSA Notice and Request for Comment – Proposed Repeal and
Replacement of Multilateral Instrument 13-102 – *System Fees for SEDAR
and NRD*
Comments of the Securities and Capital Markets Group of Borden
Ladner Gervais LLP**

We are pleased to provide the members of the Canadian Securities Administrators (CSA) with comments on the proposals described in the above-noted CSA Notices and Requests for Comment. Our comments are those of the individual lawyers in the Securities and Capital

Markets practice group of Borden Ladner Gervais LLP listed below, and do not necessarily represent the views of BLG, other BLG lawyers or our clients.

We are trusted legal advisers to many public issuers, including investment funds, as well as for many registrants (firms and individuals). As such, we handle thousands upon thousands of SEDAR, SEDI, NRD and other electronic filings of documents on behalf of those public issuers, registrants and individuals in the course of any one year, including handling the millions of dollars that are paid by those issuers, registrants, individuals in respect of SEDAR, SEDI and NRD systems fees and the associated regulatory filing fees. Our work with our clients has given us an informed view of issues associated with SEDAR, SEDI and NRD and the other electronic filings systems and we are fully in support of the *concept* behind the Renewed System referred to in the CSA Notices. Replacing these outdated platforms with a single, nationally harmonized platform could reduce the regulatory burden of compliance while improving the efficient flow of information that underpins fair and transparent capital markets.

Desirability of More Information about the Renewed System

While the CSA Notices set out in broad strokes the vision for the Renewed System: that is, a “modernized, more secure and centralized system”, with a “single point of access” with “modern, browser-based interface and better search capabilities”, there were very little details given on the Renewed System, its use and its operations. In order for there to be a seamless transition to the Renewed System, we urge the CSA to publish more details on the Renewed System as soon as they are available, with particular focus on the controls that will be in place for system security, including the applicable cybersecurity controls, recognizing that there will be much personal and confidential information that will pass through the Renewed System, particularly when the NRD and SEDI replacement phases are reached.

It would also be very useful to understand a more precise timetable for replacements for SEDI and NRD, in particular, so that we can ensure that we are operationally ready for the Renewed System and can assist our clients in the transition.

In that regard, we recommend that the CSA establish a public website where issuers, registrants and the general public can get information about the Renewed System and provide feedback or ask questions of the CSA. This will also serve to allow the CSA to establish FAQs and understand what concerns exist with respect to the Renewed System well in advance of its launch.

User Testing Prior to Launch

Following from the previous comment, we consider it vital to smooth the transition from the old system to the Renewed System that the CSA make the Renewed System available for user testing and feedback prior to its official launch, so that any glitches or technical issues with the Renewed System can be addressed prior to the Renewed System going live. Given our heavy use of SEDAR, SEDI, NRD and the various provincial online filing portals on behalf of our clients and our expertise

in their operation, we are well equipped to provide constructive feedback on the functionality of the Renewed System. We would welcome the opportunity to participate in any Renewed System testing offered by the CSA.

We also suggest that the existing systems remain available for a window of time following the launch of the Renewed System, to facilitate a smooth transition for those not involved in the pre-launch testing. If both the existing systems and the Renewed System will not be made simultaneously available during the transition period, late filing fees should not be charged where a filing is delayed by issues incurred in using the Renewed System.

Fee Increases

We appreciate that the new approach to system user fees has the potential to improve the simplicity of calculating, inputting and transmitting system user fees. Though CSA anticipates the net effect of the proposed changes to Renewed System user fees is a reduction in annual system fee revenue of \$1.7 million, the CSA acknowledges that certain issuers, most notably investment funds, will see their fees increase under this new system. There will also be significant fee increases applicable to non-Canadian firms who rely on the international adviser and international dealer exemptions provided for in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. We consider that it is incumbent on the CSA to explain how it arrived at the overall distribution of fees amongst the various constituents using the Renewed System and continuously report on a regular basis on that distribution. Changes may be necessary based on experience in the use of the Renewed System.

Support for IFIC Comments

Prior to submitting our comments, we had the benefit of reviewing the comment letter of The Investment Funds Institute of Canada (submitted on July 29). We are in complete agreement with their comments, and wish to echo and provide our support for (in particular):

- IFIC’s comments on the need for regulatory harmonization on the approach for filing and fee requirements in respect of Form 45-106F1, in light of CSA Staff Notice 45-325 *Filing Requirements and Fee Payable for Exempt Distributions Involving Fully Managed Accounts*. The fact that the CSA still cannot agree on the approach to take in this area is a very disappointing development, particularly since (i) NI 45-106 so clearly articulates the filing requirements when issuers are issuing securities to “managed accounts” on a private placement basis and (ii) the CSA Staff Notice 45-325 was published well after the latest amendments to NI 45-106 came into force. We are also very disappointed that the three provincial regulators taking a different approach from the rest of Canada did not describe or explain why they felt they needed to take a different approach. As suggested by IFIC, we urge the CSA to come to a harmonized approach well in advance of the January 30, 2020 deadline for the annual filings for exempt distribution reports for investment funds. The different approaches articulated in the CSA Notice 45-325 are a prime example of a

needless regulatory burden, given the enhanced tracking and reporting that will be incumbent on investment funds and their managers.

- IFIC’s two comments on the System Rule. These comments raise important matters that, unless addressed, will serve to increase the regulatory burden on all users of the Renewed System. These are also examples of issues that can be expected to be flushed out if the CSA organizes a substantive user testing of the Renewed System as we (and IFIC) recommend.
- IFIC’s suggestions on CSA Systems Governance.

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We hope that our comments will be considered positively by the CSA and as helpful to advance the CSA’s important work to develop the Renewed System.

Please contact any one of the lawyers listed below 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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