Table of Contents

Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

March 1, 2002

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

Unless otherwise indicated in the date column, all hearings will take place at the following location:

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
Suite 1700, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

Telephone: 416- 597-0681 Telecopiers: 416-593-8348

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- -

THE COMMISSIONERS

David A. Brown, Q.C., Chair	—	DAB
Paul M. Moore, Q.C., Vice-Chair	—	PMM
Howard I. Wetston, Q.C., Vice-Chair	—	HIW
Kerry D. Adams, FCA	—	KDA
Derek Brown	—	DB
Robert W. Davis, FCA	—	RWD
Robert W. Korthals	—	RWK
Mary Theresa McLeod	—	MTM
H. Lorne Morphy, Q. C.	—	HLM
R. Stephen Paddon, Q.C.	—	RSP

SCHEDULED OSC HEARINGS

March 5,7, 8, 19,21,22,28, 29/02 9:30 a.m. March 18 & 25, 2002 9:30 a.m. - 1:00 p.m. April 1, 2,4,5, 8, 11,12/02 9:30 a.m. March 12 & 26/02 2:00 p.m. April 9/02 2:00 p.m.	**YBM Magnex International Inc., Harry W. Antes, Jacob G. Bogatin, Kenneth E. Davies, Igor Fisherman, Daniel E. Gatti, Frank S. Greenwald, R. Owen Mitchell, David R. Peterson, Michael D. Schmidt, Lawrence D. Wilder, Griffiths McBurney & Partners, National Bank Financial Corp., (formerly known as First Marathon Securities Limited)** s.127 K. Daniels/M. Code/J. Naster/I. Smith in attendance for staff. Panel: HIW / DB / RWD
June 12, 2002 9:30 a.m.	**Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein and Robert Topol** s. 127 J. Superina in attendance for Staff Panel: HIW
March 27, 2002 9:30 a.m.	**Frank Smeenk** s. 144 I. Smith in attendance for Staff Panel: TBA
April 15 - 19, 2002 9:30 a.m.	**Sohan Singh Koonar** s. 127 J. Superina in attendance for Staff Panel: PMM / KDA / RSP

April 22 - 26, 2002 10:00 a.m.	**Mark Bonham and Bonham & Co. Inc.** s. 127 M. Kennedy in attendance for staff Panel: HIW / KDA /
May 1 - 3, 2002 10:00 a.m.	**JAMES FREDERICK PINCOCK** s. 127 J. Superina in attendance for staff Panel: PMM / RSP / HLM
May 6, 2002 10:00 a.m.	**Teodosio Vincent Pangia, Agostino Capista and Dallas/North Group Inc.** S. 127 Y. Chisholm in attendance for Staff Panel: PMM
May 13 - 17, 2002 10:00 a.m.	Yorkton Securities Inc., Gordon Scott Paterson, Piergiorgio Donnini, Roger Arnold Dent, Nelson Charles Smith and Alkarim Jivraj **(Piergiorgio Donnini)** s. 127(1) and s. 127.1 J. Superina in attendance for Staff Panel: PMM / KDA
June 12, 2002 9:30 a.m.	**Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein and Robert Topol** s. 127 J. Superina in attendance for Staff Panel: HIW

ADJOURNED SINE DIE

Buckingham Securities Corporation, Lloyd Bruce, David Bromberg, Harold Seidel, Rampart Securities Inc., W.D. Latimer Co. Limited, Canaccord Capital Corporation, BMO Nesbitt Burns Inc., Bear, Stearns & Co. Inc., Dundee Securities Corporation, Caldwell Securities Limited and B2B Trust

DJL Capital Corp. and Dennis John Little

Dual Capital Management Limited, Warren Lawrence Wall, Shirley Joan Wall, DJL Capital Corp., Dennis John Little and Benjamin Emile Poirier

First Federal Capital (Canada) Corporation and Monter Morris Friesner

Global Privacy Management Trust and Robert Cranston

Irvine James Dyck

Ricardo Molinari, Ashley Cooper, Thomas Stevenson, Marshall Sone, Fred Elliott, Elliott Management Inc. and Amber Coast Resort Corporation

M.C.J.C. Holdings Inc. and Michael Cowpland

Offshore Marketing Alliance and Warren English

Rampart Securities Inc.

Robert Thomislav Adzija, Larry Allen Ayres, David Arthur Bending, Marlene Berry, Douglas Cross, Allan Joseph Dorsey, Allan Eizenga, Guy Fangeat, Richard Jules Fangeat, Michael Hersey, George Edward Holmes, Todd Michael Johnston, Michael Thomas Peter Kennelly, John Douglas Kirby, Ernest Kiss, Arthur Krick, Frank Alan Latam, Brian Lawrence, Luke John Mcgee, Ron Masschaele, John Newman, Randall Novak, Normand Riopelle, Robert Louis Rizzuto, And Michael Vaughan

S. B. McLaughlin

Southwest Securities

Terry G. Dodsley

1.1.2 OSC Staff Notice 52-713 - Report on Staff's Review of Interim Financial Statements and Interim MD&A

ONTARIO SECURITIES COMMISSION
STAFF NOTICE 52-713

REPORT ON STAFF'S REVIEW OF INTERIM FINANCIAL STATEMENTS AND INTERIM MANAGEMENT'S DISCUSSION AND ANALYSIS - FEBRUARY 2002

1. PURPOSE OF NOTICE

This notice reports the findings and comments of staff of the Continuous Disclosure Team of the Corporate Finance Branch arising from our review of a sample of interim financial statements and interim management's discussion and analysis (MD&A) for the three month period ended March 31, 2001.

2. OBJECTIVE AND SCOPE OF REVIEW

The objective of the review was to assess compliance by reporting issuers with the requirements, as they relate to interim financial statements, of:

- Ontario Securities Commission (OSC) Rule 51-501 - AIF and MD&A (Rule 51-501);
- OSC Rule 52-501 - Financial Statements (Rule 52-501); and of
- Section 1751, the standard on Interim Financial Statements as set out in the Handbook of the Canadian Institute of Chartered Accountants (Handbook).

These rules and standard apply to companies with fiscal years beginning on or after January 1, 2001.

Historically, the quality of interim financial statement reporting in Ontario has been poor. To address this problem, on January 1, 2001, the OSC brought into force Rules 51-501 and 52-501. At the same time, the OSC issued supporting companion policies. These rules and companion policies provide guidance on, among various things, the type of financial and other disclosure that should be included in interim financial statements and interim MD&A. Shortly after the rules were issued, we commenced this review to determine if the guidance provided by the OSC was being followed.

We selected 150 issuers, representing various industries, at random for this review. Approximately 120 of these issuers are eligible to file a short form prospectus under National Instrument 44-101, with the remainder not being eligible to file a short form prospectus. We corresponded with 77 of the 150 issuers chosen for this review. It was not necessary to issue letters to the other 73 issuers.

The review focussed primarily on interim financial statements and interim MD&A filed for the first quarter ended March 31, 2001, along with a review of material change reports and news releases issued during that quarter and shortly thereafter.

We also review interim financial statements and interim MD&A as part of our full reviews of issuers' continuous disclosure records, as described in OSC Staff Notice 51-703. Some of the observations in parts 5, 6 and 7 of this notice arose from those reviews.

3. EXECUTIVE SUMMARY

Our findings indicated that issuers and their advisors were not as well informed about Rules 51-501 and 52-501, and Handbook section 1751, as we might have expected.

We corresponded with 77 of the 150 issuers chosen for this review. The 77 letters were issued for the following reasons:

- 17 (or approximately 22%) as a result of issuers failing to include the minimum components of interim financial statements, or failing to include the minimum components for the appropriate periods.
- 32 (or approximately 42%) as a result of other issues related to generally accepted accounting principles (GAAP), be it recognition, measurement or disclosure.
- 23 (or approximately 30%) for insufficient or inadequate information in the MD&A.
- 5 (or approximately 6%) for a perceived failure to file material change reports.

Our letters had the following outcome:

- 17 (or approximately 22%) of the issuers re-filed their interim financial statements, generally within four business days of us issuing the letter.
- 40 (or approximately 52%) of the issuers committed to improve disclosure in interim MD&A and notes to the financial statements, in future filings.
- 20 (or approximately 26%) of the issuers provided sufficient information in their response to our questions and did not generate any follow-up comments.

Also, as a result of our continuing full reviews of issuers' continuous disclosure records, as described in OSC Staff Notice 51-703, 8 issuers to date have re-filed their interim financial statements.

We identified the following issues as a result of our review which, for ease of reference, have been broken down under three broad headings:

Clear non-compliance with Rule 52-501 and GAAP - see Part 4 for details

Some issuers had to re-file their interim financial statements as a result of:

- not including an interim balance sheet
- not including notes to the interim financial statements
- failing to include a balance sheet as at the end of the immediately preceding fiscal year.

As the review progressed, we also noted that some issuers failed to include both current and year to date income statements and cash flow statements, with comparative statements for the immediately preceding fiscal year.

Other GAAP-related issues - see Part 5 for details

- omission of basic disclosures required in interim financial statements by Handbook sections 1751.14 (a) and (b)
- failure to include a description of any seasonality or cyclicality of interim period operations
- failure to provide relevant information about reportable segments
- failure to disclose changes in accounting policy or adoption of new accounting policies
- failure to follow Handbook guidance on income taxes, especially with respect to the reassessment of tax assets and liabilities

Interim MD&A (Rule 51-501) issues - see Part 6 for details

Some issuers did not comply with certain requirements of Part 4.2 of Rule 51-501. In particular, the following requirements were not being met:

- an update of the analysis of the issuers' financial condition in the annual MD&A for the most recently completed financial year
- an analysis of the issuers' cash flows for the most recently completed interim period
- a comparison of the issuers' financial condition and cash flows for the current quarter and the year to date period with the corresponding periods in the previous year.

In our view, the requirements of Rules 51-501 and 52-501 and Handbook section 1751 are clearly set out. We are concerned that the lack of compliance demonstrated by our review suggests a failure by management to meet its obligations to maintain a current level of knowledge of financial reporting requirements. Our findings also raise questions about how the board of directors and the audit committee of issuers carry out their responsibility to monitor and challenge management of financial reporting matters.

4. CLEAR NON-COMPLIANCE WITH RULE 52-501 and GAAP

Approximately 22% of the sample of issuers re-filed their interim financial statements as a result of them not complying with the requirements of Rule 52-501 and Handbook section 1751. In particular, some issuers did not include:

- an interim balance sheet

- a comparative balance sheet as at the end of the preceding fiscal year
- notes to the interim financial statements

As the review progressed, we also noted that some issuers failed to include both current and year to date income statements and cash flow statements, with comparative statements for the immediately preceding fiscal year.

The most common deficiency we noted was that issuers did not include a comparative balance sheet as at the end of the immediately preceding fiscal year (December 2000), as required by Rule 52-501 and Handbook section 1751. Instead, some issuers included a comparative balance sheet for the comparable period (March 2000).

In our view, not providing the minimum components of, or the relevant periods for, interim financial statements clearly results in issuers failing to file financial statements in accordance with Rule 52-501 and GAAP. Accordingly, for the purposes of this review, we required these issuers to re-file their interim financial statements within four business days from issuing our letter.

5. OTHER GAAP-RELATED ISSUES

5.1 Basic information required in interim financial statements

Issuers frequently omitted the disclosure required by Handbook sections 1751.14 (a) and (b). Handbook section 1751.14 (a) requires, when applicable, a statement that the disclosures in the interim financial statements may not conform in all respects to GAAP for annual financial statements. The section also requires a statement that indicates that interim financial statements should be read in conjunction with the most recent annual financial statements. Handbook section 1751.14 (b) requires a statement that the interim financial statements follow the same accounting policies and methods of their application as the most recent annual financial statements, except in limited circumstances.

Issuers occasionally failed to include a description of any seasonality or cyclicality of interim period operations, as required by Handbook section 1751.14 (c), and certain disclosures required in annual financial statements; for example for discontinued operations, as required by Handbook section 1751.14 (g).

We remind issuers that interim financial statements should disclose, when applicable, at least the minimum disclosures as specified in Handbook section 1751.14.

5.2 Reportable Operating Segments

Some issuers included unclear or insufficient information with respect to reportable segments. We also found that where changes occurred in reportable operating segments, there was a tendency not to explain those changes from the previous annual financial statements.

We remind issuers about the requirement in Handbook section 1751.14 (e), which seeks information about each reportable segment, and requires, among other things, a description of differences from the most recent annual financial statements in the basis of segmentation, or in the basis of measuring segment profit or loss.

We also remind issuers to clearly state the factors used to identify the enterprise's reportable segments, as well as the types of products and services from which each reportable segment derives its revenues, in accordance with Handbook section 1701.29.

Examples:

5.2.1 Company A, in the real estate industry, did not disclose a break down of revenue from external customers for its reportable segments, as required by Handbook section 1751.14(e)(i) and section 1701.39. Instead, it disclosed only the gross profit (revenue less property operating expenses) for the operating segments.

Company A's rationale was that, for companies in the real estate industry, gross profit or, (as Company A referred to it) Funds from Operations (FFO), is the most important measure of performance. Accordingly, FFO is the focus of a reader of the interim financial statements in assessing the value of the company, and that is what Company A chose to disclose in its note on operating segments.

While we acknowledge that FFO may be a key measure of performance in the real estate industry, GAAP requires the disclosure of revenue by segment. In order to ensure consistency on this point within the real estate industry, we reviewed the segmented disclosure of a sample of five other real estate issuers. All five disclosed revenue by segments.

Company A concurred with our view and agreed to disclose segmented revenues in its future filings of interim and annual financial statements. Company A's subsequent interim financial statements disclosed revenue by segment.

5.2.2 Company B, an investment holding company, did not disclose or describe a change (an addition) in reportable operating segments, as required by Handbook section 1751.14 (e). Its rationale was that disclosure about the impending change in segments had been made in the annual MD&A for the year ended December 31, 2000, and disclosure about the business of the segment had been included in the interim financial statements.

Company B concurred with our view that these other disclosures did not compensate for the deficiencies in its interim financial statement disclosures and that a description of differences in segmented reporting should be included in interim financial statements. Company B agreed to include a description of this change in future interim filings, in accordance with Handbook section 1751.14(e)(v). Company B's

subsequent interim financial statements included a description of the change.

5.3 Changes in accounting policy or adoption of new accounting policies

Some issuers did not disclose a change in accounting policy for the adoption of Handbook section 3500 - Earnings Per Share. All of these issuers committed to including the disclosure in future filings.

We expect that changes in accounting policies would be disclosed in accordance with Handbook section 1751.14 (b). We remind issuers that where a changed accounting policy or method has been adopted, the interim financial statements should provide the same information and disclosures concerning the change as required in the annual financial statements. Similar disclosure is also required when issuers adopt new accounting policies or methods.

5.4 Handbook guidance on income taxes

Some issuers did not follow the Handbook Application guidance on income taxes, especially with respect to reassessments of tax assets and liabilities, and to material variances in future income tax rates, from quarter to quarter. Appendix B (paragraphs B12 to B25) to section 1751 of the Handbook discusses and illustrates the application of Handbook section 3465 - Income Taxes - to interim financial statements.

Examples:

5.4.1 An issuer, Company C, in the manufacturing industry did not include a tax provision in its first quarter interim financial statements, on the basis that it had a large tax loss carried forward that would be sufficient to eliminate taxable income for the first two quarters.

Handbook section 1751 Appendix B (paragraph B13) requires that Company C should have calculated its income tax expense by applying the estimated average annual effective income tax rate (estimated tax rate) to its first quarter pre-tax income. Further, Appendix B (paragraph B21) requires that tax losses carried forward should only be reflected in the computation of the estimated tax rate to the extent that the losses carried forward have not previously been recognised as a tax asset. Consequently, Company C should have recorded a tax provision using the estimated tax rate, and correspondingly drawn-down the income tax asset.

Company C concurred with our view and consequently re-stated its interim financial statements for the first quarter. The restatement represented 34% of net income and correspondingly decreased earnings per share by the same amount.

5.4.2 Another issuer, Company D, in the real-estate industry, did not adequately apply the estimated tax rate for the March 31, 2001 interim period.

Company D acknowledged that it had not followed the guidance in Handbook section 1751 Appendix B (paragraph B13) for its first quarter. However, it addressed this in its interim financial statements for the second quarter, by increasing its provision by more than the estimated tax rate. Company D's six month cumulative provision was, as a result, correctly made at the estimated tax rate. Consequently, staff did not pursue the issue further. Company D committed to disclose, as required by Handbook section 1751 Appendix B (paragraph B13), any changes in its estimated tax rate that may have a material effect on the interim financial statements. We reviewed Company D's subsequent interim financial statements and determined that the tax rate had not changed materially from the previous interim period. Consequently, no further disclosure was required to be made by Company D during that quarter.

6. INTERIM MD&A

Approximately 30% of letters issued by staff were as a result of insufficient, or poor quality information in the interim MD&A. Several issuers did not comply with Part 4.2 of OSC Rule 51-501. In particular, the following requirements were not generally met:

- an update of the analysis of the issuers' financial condition in the annual MD&A for the most recently completed financial year;
- an analysis of the issuers' cash flows for the most recently completed interim period; and
- a comparison of the issuers' financial condition and cash flows for the current quarter and the year to date period with the corresponding periods in the previous year.

The most common deficiency was the lack of analysis and discussion of aspects of the financial condition, including a comprehensive discussion of the balance sheet.

While a discussion and analysis of every line item on the balance sheet may not be warranted, Rule 51-501 requires that material or significant changes in financial condition from the previous fiscal year end should be discussed in the interim MD&A.

For example, Company E, in the mining industry, did not discuss or explain material reductions in accounts receivable of approximately 36% and accounts payable of approximately 21% between the December fiscal year end and the end of March 31, 2001. Upon questioning, the rationale provided by Company E was that it was going through a transition stage. In Company E's view, since information about the transition had been provided in various press releases issued by it previously, such comparisons were unnecessary.

We sought and received a commitment that Company E's future filings would include discussions and comparisons as required by Rule 51-501. Company E's subsequent interim MD&A included a more comprehensive and significantly improved discussion and analysis of its operations.

In our view, a press release issued by a company is not sufficient, in and of itself, to provide meaningful and complete disclosure about matters affecting the company. Material changes that occur during the course of the interim period should be discussed in the interim MD&A.

Another common deficiency was a lack of analysis and comparison of issuers' cash flows. Some issuers did discuss items for the current quarter, however, numbers were very seldom compared to the comparative quarter, even on a high-level basis.

We also found that some issuers tended to provide a discussion of changes in working capital as a whole, without breaking down and providing an explanation of the component parts. Issuers tried to meet the requirements of Rule 51-501 by combining the requirements to discuss and analyse the issuers' financial condition and cash flows under the heading "Liquidity and Capital Resources". However, generally, this section of the interim MD&A simply reiterated the numbers as they appeared on the face of the balance sheet and cash flow statement, without any accompanying explanation, discussion or analysis. Combining a discussion of the balance sheet and cash flow statement is acceptable, but only to the extent that the discussion and analysis provided reflects the interaction in the issuers' business as reported by the two financial statements. For example, an issuer's increase in debt may be off-set by a reduction in accounts payable. This may be discussed as part of an issuer's combined section on liquidity and capital resources.

We found limited discussion of how the changes occurring in the quarter would affect the issuer on a prospective basis. For example, only a few companies discussed the expected effect of the changing economic climate on their business. Where appropriate, we would have expected to see, under the liquidity section, a discussion about issuers' ability to generate adequate amounts of cash in the short term, and an explanation of the major demands placed on issuers' liquidity and how (for example, with a new line of credit) the issuer expects to meet those demands in the short term.

We encourage issuers to provide a complete and meaningful discussion in their interim MD&A. For example, a statement that the issuer has sufficient capital resources to meet its liquidity requirements for the next twelve months is of limited use to readers of the MD&A. Issuers should consider continuing the discussion by describing the sources of funds and capital resources, and the circumstances likely to affect those sources, in the short term.

Issuers could also provide more complete and meaningful information on their reportable operating segments. Where issuers disclose such segments in their financial statements, issuers should provide an analysis and comparison on that basis, as well as on the issuer as a whole.

In our view, MD&A is intended to provide readers the ability to look at issuers through the eyes of management. It provides management the opportunity to discuss the dynamics of the business, thereby giving investors, both current and prospective, the ability to better assess the issuers' historical performance and position, as well as future prospects. Consequently, in our view, the interim MD&A should discuss any significant changes from the annual or the previous interim MD&A, and disclose any significant adjustments to its outlook going forward.

We remind issuers that the companion policy to Rule 51-501 provides guidance with respect to interim MD&A, and that Form 44-101F2 - MD&A to National Instrument 44-101 sets out the information an MD&A should contain. Both, the companion policy and Form 44-101F2, can be found on the OSC web-site located at www.osc.gov.on.ca.

Interim MD&A - specific matters

We found that the vast majority of mining companies that were reviewed tended to include a discussion on operational statistics like "mine throughput" and "price per carat", with only minimal discussion, if any, of the financial results as reported in the financial statements. We recognise that some of these operational statistics provide valuable information, however, it is important that they be related directly to the results of operations as represented in the financial statements.

Some issuers filed their interim MD&A later than the interim financial statements. We remind issuers that Rule 51-501 requires the filing of the interim MD&A concurrently with the interim financial statements. Some issuers incorrectly filed their interim MD&A under the "other" category on SEDAR. There is a separate filing type on SEDAR under which the interim MD&A should be filed.

7. OTHER MATTERS

7.1 National Instrument 62-102 (NI) - Disclosure of Outstanding Share Data

This little known NI, which came into force on March 15, 2000, requires issuers to include data with respect to the company's outstanding shares, within, or supplementing, the interim financial statements.

Part 2.1(1) of the NI allows this disclosure to be made in a "supplement" to the interim financial statements, if the supplement is filed and sent to issuers' security holders with the applicable interim financial statements. For the purpose of this NI, there is no technical definition of the word "supplement". Our interpretation of "supplement" is anything (a sheet of paper with the relevant information would be adequate) that is filed along with (supplements) the interim financial statements. Interim MD&A is one example of where such information may be included.

Part 2.1(2) requires the relevant disclosure as of the latest practicable date. Our interpretation of "latest practicable date" is that the information should be current as close as possible to the date of filing of the interim financial statements. Disclosing the number of shares outstanding at quarter-end is generally not sufficient to meet the requirements of Part 2.1(2), given that issuers have up to 60 days subsequent to their quarter-end to file their interim financial statements.

7.2 Material Change Reports

We found that some issuers were not filing reports of material changes, as required by section 75 of the

Securities Act. Sometimes the material information was included as a note to the financial statements and/or in a press release. Examples of where such reports were not filed include the suspension of payments of dividends by an issuer, and the detailing of a transaction that led to an issuer going private.
In the examples mentioned above a press release had been filed. In such cases, a report of material change should have been filed with the OSC, together with the press release.

7.3 Handbook section 3870 - Stock Based Compensation and Other Stock Based Payments

We remind issuers that Handbook section 3870 applies to companies with fiscal years beginning on or after January 1, 2002. Consequently, we expect to see the guidance in Handbook section 3870 being applied by companies (with a December 31 fiscal year end) during the first interim period to March 31, 2002.

7.4 Handbook sections 1581 - Business Combinations, and 3062 - Goodwill and Other Intangible Assets

We remind issuers that, for issuers with a calendar year end, the full impact of these two new standards will be in effect for the interim period ended March 31, 2002. The application of these standards requires that issuers focus on all aspects of their existing accounting for goodwill and intangible assets in business combinations. These standards contain important transition rules to which issuers should pay close attention while preparing their March 31, 2002 interim financial statements. In addition, we expect issuers to provide clear and complete disclosures of the impact of the transition to the new rules. We expect to focus on the application of these new rules, and particularly the application of the transition provisions.

7.5 Corporate governance

We remind issuers that Rule 52-501 requires that the board of directors of an issuer review the interim financial statements prior to them being filed with the Commission and delivered to security holders. The rule contemplates that the board of directors, in fulfilling that responsibility, may delegate the review of the interim financial statements to an audit committee of the board.

We also remind issuers that the companion policy to Rule 52-501 suggests that, in the Commission's view, the board of directors of an issuer, in discharging its responsibilities for ensuring the reliability of interim financial statements, should consider engaging an external auditor to carry out a review of those financial statements. Further, the companion policy to Rule 51-501 suggests that, in the Commission's view, if an issuer has an audit committee, the MD&A should be carefully reviewed and considered by that committee.

8. CONCLUSION

In our view, the requirements of Rules 51-501 and 52-501 and Handbook section 1751 are clearly set out. We are concerned that the lack of compliance demonstrated by our review suggests a failure by management to meet its obligations to maintain a current level of knowledge of financial reporting requirements. Our findings also raise questions about how the board of directors and the audit committee of issuers carry out their responsibility to monitor and challenge management of financial reporting matters.

We have however, observed what appears to be a gradually increasing awareness of Rules 51-501 and 52-501, and Handbook section 1751, during the period following the review. We encourage issuers to consult with their advisors, particularly where unusual transactions that need to be reported in a timely fashion occur, during the course of the interim period.

We remind issuers that failing to comply with GAAP and securities law may result in us initiating administrative procedures against issuers, including, but not limited to, placing issuers on the list of defaulting issuers. Recurring failures to comply with GAAP and securities law could also provide a basis for enforcement action.

We are planning targeted reviews to assess compliance of the disclosure on Executive Compensation as required by Form 40 and of Handbook section 3870. These reviews are part of our shift towards the review of more continuous disclosure documents. In addition to targeted reviews, we carry out a range of other reviews described in OSC Staff Notice 51-703.

OSC Rules 51-501 and 52-501, along with their respective companion policies can be found on the OSC web-site located at **www.osc.on.ca**.

Questions on this notice or review may be referred to:

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1.2 News Releases

1.2.1 OSC Proceeding in Respect of Livent - Adjourned to June 12, 2002

FOR IMMEDIATE RELEASE
February 22, 2002

OSC PROCEEDING IN RESPECT OF LIVENT INC. et al

ADJOURNED TO JUNE 12, 2002

Toronto – The hearing before the Ontario Securities Commission (the "Commission") in respect of Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein and Robert Topol scheduled for February 25, 2002, is adjourned to June 12, 2002 commencing at 9:30 a.m., on the consent of the parties, and in accordance with the terms of the Order of the Commission made February 22, 2002.

Copies of the Notice of Hearing issued on July 3, 2001 and Statement of Allegations, and the Order of the Commission made on February 22, 2002, are available at **www.osc.gov.on.ca** or from the Commission, 19th Floor, 20 Queen Street West, Toronto, Ontario.

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Director, Enforcement Branch
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For Investor Inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.2.2 OSC Launches Investor Guide on Risks of Borrowing to Invest

FOR IMMEDIATE RELEASE
February 25, 2002

ONTARIO SECURITIES COMMISSION LAUNCHES INVESTOR GUIDE OUTLINING RISKS OF BORROWING TO INVEST

Toronto - Leverage can be an effective way to boost returns, but investors should also understand the potential negative consequences of borrowing to invest, a new Investor Guide from the Ontario Securities Commission says.

Buying investments with borrowed money is an increasingly popular investment strategy. The OSC has developed a 12-page Guide to help investors understand the risks of leveraged investing. The resource includes lessons illustrating the risks of secured investment loans, mutual fund loans, buying on margin and short selling.

Borrowing to Invest: Understanding Leverage is available free of charge as part of the OSC's Investor Education Kit. It is the fourth in the OSC's Guide for Investors series which also includes *An Investor's Guide to OSC Resources and Services, A Step-by-Step Guide to Making a Complaint*, and *Dealers and Advisers: With Whom are You Dealing for Your Investment Services?*

Investors can request a free Investor Education Kit by calling 1-877-785-1555 or they can view all our investor resources, including the new guide, on the OSC's web site at **www.osc.gov.on.ca**. The new guide can be found on the Required reading page of the Investor Resources section.

About the Ontario Securities Commission:

The Ontario Securities Commission is the regulatory body for the securities industry in Ontario, administering and enforcing the Ontario Securities Act and Commodity Futures Act. Our mandate is to protect investors from unfair or improper practices and to foster fair and efficient capital markets.

For Media Inquiries:
Terri Williams
Manager, Investor Education
416-593-2350

For Investor Inquiries:
OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.2.3 Results of Survey on Investment Dealers' Procedures Relating to Off-shore Accounts - CSA Release

For Immediate Release
February 26, 2002

SECURITIES REGULATORS ANNOUNCE RESULTS OF SURVEY ON INVESTMENT DEALERS' PROCEDURES RELATING TO OFF-SHORE ACCOUNTS

Toronto – A national survey has revealed that Canada's investment dealers have been revising their policies and procedures to address regulators' concerns about the use of off-shore accounts to circumvent legislation governing financial transactions.

On October 30, 2001, staff of the British Columbia, Alberta, Quebec and Ontario securities commissions sent requests for information to members of the Investment Dealers Association of Canada (IDA). The requests focused on two areas:

- the number of client accounts held by the member firm which originate from each of the countries or territories identified as current or former non-cooperating jurisdictions by the Organization for Economic Co-operation and Development's Financial Action Task Force on Money Laundering (the "FATF"), and
- the member firm's policies and procedures for discharging account opening, "know-your-client" and account supervision obligations for these accounts.

The survey responses indicated that approximately 13,000 accounts located in FATF non-cooperating jurisdictions are serviced by IDA member firms. The vast majority of the firms have less than one per cent of their total client account base located in FATF non-cooperating jurisdictions, but for firms with large retail operations, this percentage may represent several hundred accounts.

Although member firms state that they have adopted policies and procedures to comply with existing rules and regulations governing account opening, "know-your-client" and account supervision obligations, few firms have adopted specific controls on opening accounts from off-shore jurisdictions. In addition, the responses indicated that member firms have adopted disparate practices and procedures to comply with existing regulations. For example, only some firms stated that they make detailed inquiries regarding the source of a client's funds and the identities of persons or companies who may have a financial interest in the client's account.

Almost all member firms said that they have revised or are revising existing policies and procedures in light of such regulatory developments as the Proceeds of Crime (Money Laundering) Act, recent Canadian tribunal decisions concerning "know-your-client" obligations, proposed changes to IDA regulations governing account opening and supervision, and changing international standards.

Member firm responses and the findings of the questionnaire will be sent to the appropriate regulators to assist in risk-based oversight and compliance reviews. The Commissions will also use the findings for national and international discussions about the level of account opening due diligence needed to mitigate the risks from servicing client accounts, particularly accounts located in FATF non-cooperating jurisdictions.

For more information:

British Columbia Securities Commission:
Andrew Poon
Media Relations Officer
604-899-6880
1-800-373-6393 (B.C. & Alberta only)

Sasha Angus
Director, Enforcement
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Director, Communications
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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Crown Life Insurance Company - MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Decision declaring corporation to be no longer a reporting issuer following the acquisition of all of its outstanding securities by another issuer.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., s.83.

IN THE MATTER OF
THE SECURITIES LEGISLATION
OF ALBERTA, SASKATCHEWAN, ONTARIO, QUÉBEC,
NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
CROWN LIFE INSURANCE COMPANY

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, Saskatchewan, Ontario, Québec, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") has received an application from Crown Life Insurance Company (the "Issuer") for a decision under the securities legislation of the Jurisdictions (the "Legislation") that the Issuer be deemed to have ceased to be a reporting issuer under the Legislation;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Saskatchewan Securities Commission is the principal regulator for the application;

AND WHEREAS the Issuer has represented to the Decision Makers that:

1. The Issuer is an insurance company existing under the federal laws of Canada with its head office in Regina, Saskatchewan;

2. The authorized capital of the Issuer consists of an unlimited number of common shares (the "Common Shares"), an unlimited number of Class I Preferred Shares issuable in series, an unlimited number of Second referred Shares issuable in series and one Fifth Preferred Share;

3. As at January 29, 2002, an aggregate of 3,201,194 Common Shares were issued and outstanding and held by HARO Financial Corporation ("HARO") and by 159524 Canada Inc., a wholly-owned subsidiary of Extendicare Inc. (collectively, "Extendicare"), and one Fifth Preferred Share of the Issuer was issued and outstanding and held by HARO;

4. The Issuer is a reporting issuer in each of the Jurisdictions and, to the best of its knowledge, is not in default of any of the reporting requirements under the Legislation;

5. On January 12, 2001, the Issuer completed a series of transactions, including a compulsory acquisition in accordance with the provisions of the *Insurance Companies Act* (Canada), which resulted in HARO and Extendicare being the sole holders of Common Shares (the "Initial Transaction"). The Common Shares were delisted from The Toronto Stock Exchange (the "TSE") on January 15, 2001;

6. On October 29, 2001, the Issuer announced its intention to redeem all of the then outstanding 3,652,599 Class I Preferred Shares, Series A (the "Series A Shares") in accordance with the attributes of such shares (the "Redemption"), and on November 14, 2001, the Issuer fixed the date for Redemption as December 20, 2001;

7. On December 20, 2001, all of the 3,652,599 issued and outstanding Series A Shares were redeemed by the Issuer pursuant to the Redemption and the Series A Shares were delisted from the TSE;

8. As a result of the Initial Transaction and the Redemption, HARO and Extendicare are the only security holders of the Issuer and there are no securities, including debt securities, of the Issuer issued and outstanding other than those described above; and

9. No securities of the Issuer are listed on any exchange in Canada or elsewhere and the Issuer does not intend to seek public financing by way of an offering of securities;

AND WHEREAS under the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each Decision Maker is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that the Issuer is deemed to have ceased to be a reporting issuer under the Legislation.

February 13, 2002.

"Barbara Shourounis"

2.1.2 SMTC Corporation, et al. - Variation of MRRS Decision

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief to vary original decision document dated July 20, 2000 for stock options and special warrants of an exchangeable share issuer which granted relief from certain continuous disclosure requirements provided U.S. parent filed its U.S. continuous disclosure documents in Canada.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c.S.5, as am., s. 77, 78, 79, 80(b)(iii)

Relevant Regulations

Regulation made under the Securities Act, R.R.O. 1990, Reg. 1015, as am.,

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, NEW BRUNSWICK, PRINCE EDWARD ISLAND, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF
SMTC CORPORATION,
SMTC MANUFACTURING CORPORATION OF CANADA
AND
SMTC NOVA SCOTIA COMPANY

VARIATION OF MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland and Labrador (the "Jurisdictions") issued a decision (the "Original Decision") on July 20, 2000 under the securities legislation of the Jurisdictions (the "Legislation") exempting trades in certain securities by SMTC Corporation ("SMTC"), SMTC Manufacturing Corporation of Canada ("SMTC Canada") and SMTC Nova Scotia Company ("SMTC Nova Scotia") (collectively, the "Filer") in connection with the concurrent initial public offering by SMTC Canada of its non-voting exchangeable shares (the "Exchangeable Shares") and by SMTC of shares of its common stock, and exempting SMTC Canada from, among other things, the requirements contained in the Legislation to issue a press release and report material changes, to file with the Decision Makers and deliver to shareholders interim and audited annual financial statements,

to prepare and send to shareholders proxies and information circulars, to file an information circular or make an annual filing with the Decision Makers in lieu of filing an information circular, to file annual information forms and to file and deliver to shareholders management's discussion and analysis of the financial condition and results of operation of SMTC Canada (the "Continuous Disclosure Requirements"):

AND WHEREAS the Filer has applied to the Decision Makers for a decision under the Legislation varying the Original Decision;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS the Filer has represented to the Decision Makers that:

1. the Original Decision related to, among other things, an exemption from the Continuous Disclosure Requirements and included as a condition that SMTC Canada be restricted from issuing securities except in certain circumstances;

2. the condition to the relief granted in the Original Decision did not allow the issuance of stock options or special warrants exercisable for or convertible into Exchangeable Shares;

3. the policy rationale underlying the Original Decision is equally applicable to issuances of stock options or special warrants exercisable for or convertible into Exchangeable Shares.

4. the Filer continues to comply with the Original Decision and is not in default of any requirements of the Legislation.

AND WHEREAS under the System this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that the Original Decision be varied by:

1. deleting the condition to the relief from the Continuous Disclosure Requirements at paragraph 4(h) in the Original Decision; and

2. inserting the following as paragraph 4(h) in the Original Decision:

   4(h) SMTC Canada has not issued any securities, other than: (i) securities where, in connection with the issuance thereof, SMTC Canada has received relief from the Continuous Disclosure Requirements from the applicable Jurisdictions, (ii) Exchangeable Shares; (iii) stock options or special warrants exercisable for or convertible into Exchangeable Shares, and (iv) the shares of SMTC Canada held by SMTC Nova Scotia.

February 19, 2002.

"H. Lorne Morphy, Q.C." "Mary Theresa McLeod"

2.2 Orders

2.2.1 Livent Inc., Garth Drabinsky et al. - s. 127

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, C.S.5, AS AMENDED

AND

IN THE MATTER OF
LIVENT INC.,
GARTH H. DRABINSKY,
MYRON I. GOTTLIEB,
GORDON ECKSTEIN
AND
ROBERT TOPOL

ORDER

WHEREAS on July 3, 2001 the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the Securities Act, R.S.O. 1990 c.S.5, as amended (the "Act") in respect of Livent Inc. ("Livent"), Garth H. Drabinsky ("Drabinsky"), Myron I. Gottlieb ("Gottlieb"), Gordon Eckstein ("Eckstein") and Robert Topol ("Topol");

AND WHEREAS Staff of the Commission and Drabinsky, Gottlieb, Eckstein and Topol (the "Individual Respondents") request an adjournment of this proceeding to June 12, 2002 at 9:30 a.m., or such other date as may be agreed to by the parties and fixed by the Secretary to the Commission.

AND WHEREAS the Respondents Drabinsky and Gottlieb have each given an undertaking to the Director of Enforcement of the Commission, that pending the conclusion of the proceedings commenced by the Notice of Hearing dated July 3, 2001 they will not apply to become a registrant or an employee of a registrant, or an officer or director of a reporting issuer without the express written consent of the Director or an order of the Commission releasing them from the undertaking.

AND WHEREAS the Respondent Topol has given an undertaking to the Director of Enforcement of the Commission, that pending the conclusion of the proceedings commenced by the Notice of Hearing dated July 3, 2001 he will not apply to become a registrant or an employee of a registrant, or a Chief Executive Officer, Chief Financial Officer or Chief Operating Officer or director of a reporting issuer without the express written consent of the Director or an order of the Commission releasing him from the undertaking.

AND WHEREAS the Respondent Eckstein has given an undertaking to the Director of Enforcement of the Commission, that pending the conclusion of the proceedings commenced by the Notice of Hearing dated July 3, 2001 he will not apply to become a registrant or an employee of a registrant, or a Chief Executive Officer, Chief Financial Officer or Chief Operating Officer or director of a reporting issuer without the express written consent of the Director or an order of the Commission releasing him from the undertaking.

AND WHEREAS counsel for Livent Inc. consents to this request for an adjournment.

IT IS ORDERED THAT the hearing is adjourned to June 12, 2002 at 9:30 a.m., or such other date as may be agreed to by the parties and fixed by the Secretary to the Commission.

February 22, 2002.

"Paul Moore"

2.2.2 Instinet Group Inc. - c. 104(2)(c)

Headnote

Clause 104(2)(c) - relief from the issuer bid requirements of the Act in connection with a stock option plan where the plan permits the tender of shares by employees and directors in payment of the exercise price of options previously granted - "employee" issuer bid exemption under the Act is not available due to the acquisition price of the securities.

Statutes Cited

Securities Act, R.S.O. 1990, c.S.5, as am., ss 95, 96, 97, 98, 100 and 104(2)(c).

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S.5, AS AMENDED
(the "Act")

AND

IN THE MATTER OF
INSTINET GROUP INCORPORATED

ORDER
Clause 104(2)(c)

UPON the application (the "Application") of Instinet Group Incorporated (the "Company") to the Ontario Securities Commission (the "Commission") for an order pursuant to clause 104(2)(c) of the Act exempting the Company from sections 95, 96, 97, 98 and 100 of the Act and the regulations made thereunder (the "Issuer Bid Requirements") with respect to certain acquisitions by the Company of securities of its own issue pursuant to the Company's 2000 Stock Option Plan (the "Plan");

AND UPON considering the Application and the recommendation of the staff of the Commission;

AND UPON the Company having represented to the Commission as follows:

1. The Company is a leading supplier of global equity trading, fixed income, research, and clearing and settlement services. Through the Company's services, its clients are able to communicate, negotiate and trade electronically with each other.

2. The Company is incorporated under the laws of the State of Delaware and is registered with the Securities Exchange Commission in the United States of America under the United States *Securities Exchange Act of 1934* and is not exempt from the reporting requirements of the Exchange Act pursuant to Rule 12G 3-2 made thereunder.

3. The authorized share capital of the Company consists of 950,000,000 common shares (the **"Shares"**) and 200,000,000 preferred shares. As at August 9, 2001, there were 243,719,280 Shares issued and outstanding.

4. The Company is not a reporting issuer under the Act and has no present intention of becoming a reporting issuer under the Act.

5. Shares subject to the Plan are listed and posted for trading in the United States on the Nasdaq Stock Market.

6. The Plan was established to induce employees and directors to remain in the service of the Company and its affiliates, to attract new individuals to enter into such employment or service and to encourage those individuals participating in the Plan to secure or increase their stock ownership in the Company. It is also intended to promote continuity of management and personal interest in the welfare of the Company by those who will be responsible for shaping the long-range plans of the Company.

7. The Plan is open to all employees of the Company and its designated affiliates, including any individual who is expected to become an employee and in certain circumstances to directors of the Company.

8. The Plan is available in Ontario only to employees and directors (**"Plan Participants"**) of subsidiaries in which the Company owns more than 50% of the voting interest. For the purposes of this Application, the term "subsidiary" shall be so construed as it applies to employees and directors of the Company and its subsidiaries resident in Ontario.

9. Grants of options to purchase Shares (**"Options"**) under the Plan in Ontario took place on February 23, 2000, March 2, 2001, and May 18, 2001 to selected employees of the Company resident in Ontario.

10. Participation in the Plan by Plan Participants is voluntary and Plan Participants will not be induced to participate in the Plan by expectation of or as a condition of employment or continued employment with the Company.

11. The Plan is administered by a committee (the **"Committee"**) which has complete authority in its discretion to interpret the Plan and prescribe rules and regulations in relation to it.

12. The total number of Shares reserved for issuance under the Plan is 34,118,000 Shares.

13. As at September 25, 2001, Ontario Shareholders do not hold, directly or indirectly, more than 10% of the issued and outstanding Shares of the Company and do not constitute more than 10% of the shareholders of the Company. If at any time during the effectiveness of the Plan Ontario shareholders of the Company hold, in aggregate, greater than 10% of the total number of issued and outstanding Shares or if such shareholders constitute more than 10% of all shareholders of the Company, the Company will apply to the Commission for an order with respect to further trades to and by Plan Participants in Ontario in respect of Shares acquired under the Plan.

14. Plan Participants resident in Ontario who acquired and will subsequently acquire Options under the Plan will be provided with all disclosure material relating to the Company which is provided to holders of awards resident in the United States.

15. The exercise price per Share under the Options shall be determined by the Committee in its sole discretion, but in no event shall it be less than the fair market value of the Shares on the date of grant. For the purposes of the Plan, the fair market value of the Shares (**"Fair Market Value"**) is determined in one of three ways:

    (i) The reported closing selling price for the Shares on the preceding day on the principal securities exchange or national market system on which the Shares are listed for trading.

    (ii) If there are no sales of Shares on such preceding day, then the reported closing selling price for the Shares on the next preceding day for which such closing selling price is quoted will be determinative.

    (iii) If the Shares are not traded on an established stock exchange or a national market system, the determination shall be made in good faith by the Committee based upon an independent appraisal report.

16. The term of each Option shall be fixed by the Committee, but shall not exceed ten years from the date of grant.

17. The Plan provides that the exercise of Options and the payment of the exercise price (the "**Exercise Price**") in order to acquire Shares of the Company may be effected pursuant to the payment of cash, the surrender of Shares to the Company or other consideration at the Fair Market Value on the exercise date equal to the total Option price. Payment of the Exercise Price through the surrender of Shares may be made provided such Shares have been held by the Plan Participant for at least six months.

18. There is no market in Ontario for the Shares and none is expected to develop.

19. Pursuant to the Plan, the acquisition of Shares by the Company in certain circumstances from Plan Participants may constitute an "issuer bid" as defined under the Act. The terms of the Plan permit Plan Participants to tender Shares to the Company to satisfy the Exercise Price for Options granted. The issuer bid exemptions contained in the Act may not be available for such acquisitions, since certain acquisitions may occur at a price that exceeds the "market price", as that term is defined in the Regulations to the Act.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED pursuant to subsection 104(2)(c) of the Act that the acquisition by the Company in certain circumstances of securities of its own issue from Plan Participants is exempt from the Issuer Bid Requirements.

February 19, 2002.

"Paul Moore" "K. D. Adams"

2.2.3 NTG Clarity Networks Inc. - ss. 83.1(1)

Headnote

Subsection 83.1(1) - issuer deemed to be a reporting issuer in Ontario - issuer has been a reporting issuer in Alberta since August 2000 and in British Columbia since October 2000 - issuer listed and posted for trading on the Canadian Venture Exchange - continuous disclosure requirements of British Columbia and Alberta substantially identical to those of Ontario.

Statutes Cited

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 83.1(1).

IN THE MATTER OF
THE SECURITIES ACT
R.S.O. 1990, CHAPTER S. 5, AS AMENDED
(the "Act")

AND

IN THE MATTER OF
NTG CLARITY NETWORKS INC.

ORDER
(Subsection 83.1(1))

UPON the application of NTG Clarity Networks Inc. ("NTG") for an order pursuant to subsection 83.1(1) of the Act deeming NTG to be a reporting issuer for the purposes of Ontario securities law;

AND UPON considering the application and the recommendation of the staff of the Commission;

AND UPON NTG representing to the Commission as follows:

1. NTG was incorporated on June 19, 2000 pursuant to the provisions of the Business Corporations Act (Alberta).

2. NTG's head office is located in Calgary, Alberta.

3. NTG has been a reporting issuer under the Securities Act (Alberta) (the "Alberta Act") since August 28, 2000 following the receipt from the Alberta Securities Commission (the "ASC") of NTG's initial public offering prospectus pursuant to the Alberta Securities Commission's Rule 46-501, Junior Capital Pool Offerings. NTG's common shares ("Common Shares") were listed and posted for trading on the Canadian Venture Exchange Inc. ("CDNX") on October 11, 2000, upon which date NTG became a reporting issuer under the Securities Act (British Columbia) (the "BC Act").

4. On March 7, 2001, NTG acquired all of the issued and outstanding common shares and options to acquire common shares of NTG International Inc. ("Privateco") following its shareholders' approval of such acquisition at its annual and special meeting of shareholders held on March 6, 2001 (the "Acquisition"). In connection with the Acquisition, a total of 16,309,811 NTG Common Shares were issued including 8,150,980 NTG Common Shares which were issued to 64 Ontario residents. Each of the Ontario residents receiving Common Shares and options to purchase Common Shares of NTG in connection with the Acquisition were provided with a take-over bid circular (the "Take-over Bid Circular") of NTG, which had appended thereto the Information Circular (as defined in paragraph 5), and a directors' circular of Privateco prepared in connection with the Acquisition.

5. In connection with the Acquisition, NTG prepared and sent to its shareholders, and filed with the appropriate securities regulatory authorities, an information circular dated February 2, 2001 (the "Information Circular") containing prospectus-level disclosure with respect to the business and affairs of NTG, Privateco and the Acquisition.

6 NTG has maintained its continuous disclosure obligations under the Alberta Act and the BC Act since August 28, 2000 and October 11, 2000, respectively, which obligations are substantially similar to those under the Act. The Information Circular, the Take-over Bid Circular and the continuous disclosure materials filed by NTG since August 28, 2000 are available on the System for Electronic Document Analysis and Retrieval.

7. Other than Alberta and British Columbia, NTG is not a reporting issuer or public company under the securities legislation of any other jurisdiction in Canada.

8. The authorized share capital of NTG consists of an unlimited number of Common Shares and an unlimited number of First Preferred Shares and Second Preferred Shares. There are currently 18,409,811 Common Shares issued and outstanding and no First Preferred Shares or Second Preferred Shares issued and outstanding.

9. The Common Shares are listed and posted for trading on CDNX. NTG is not a Junior Capital Pool issuer.

10. NTG is not in default of any requirements of the securities legislation in Alberta or British Columbia or of any requirements of the CDNX.

11. There have been no penalties or sanctions imposed against NTG by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority, and NTG has not entered into any settlement agreement with any Canadian securities regulatory authority.

12. Other than as described herein, neither NTG nor any of its directors, officers nor, to the knowledge of NTG, its directors and officers, or any of its controlling shareholders, has: (i) been the subject of any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority, (ii) entered into a settlement agreement with a Canadian securities regulatory authority, or (iii) been subject to any other penalties or sanctions imposed by a court or regulatory body that

would be likely to be considered important to a reasonable investor making an investment decision.

13. Other than as described herein, neither NTG nor any of its directors, officers nor, to the knowledge of NTG, its directors and officers, or any of its controlling shareholders, is or has been subject to: (i) any known ongoing or concluded investigations by: (a) a Canadian securities regulatory authority, or (b) a court of regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or (ii) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.

14. Other than as described herein, none of the directors or officers of the issuer, nor to the knowledge of the Issuer, its directors and officers, or any of its controlling shareholders, is or has been at the time of such event a director or officer of any other issuer which is or has been subject to: (i) any cease trade or similar orders, or orders that denied access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, within the preceding 10 years; or (ii) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.

15. Dr. Hatim Zaghloul, a director of NTG, is the Chairman, President, Chief Executive Officer and a director of Wi-LAN Inc. ("Wi-LAN"). In 1997, Dr. Hatim Zaghloul was the President and a director of Wi-LAN which during the course of preparation of its preliminary prospectus for its initial public offering was advised by its legal counsel that certain of its prior share issuances may have been in contravention of the Alberta Act. The management and directors of Wi-LAN had, at the time of such transactions, believed such transactions to be in compliance with the Alberta Act. The Board of Directors of Wi-LAN instructed its counsel to inform the staff of the Alberta Securities Commission (the "ASC") of the relevant circumstances prior to the filing of the preliminary prospectus. As a result, the Executive Director of the ASC, Wi-LAN and certain of its directors at the time, including, Dr. Hatim Zaghloul (the "Individual Respondents") entered into a Settlement Agreement and Undertaking (the "Agreement") to resolve any such breaches arising in such matter. Pursuant to the Agreement, Wi-LAN (i) acknowledged that certain shares issued pursuant to certain of the transactions were subject to resale restrictions and agreed to legend the appropriate share certificates accordingly, (ii) undertook that before it availed itself of any of the exemptions contained in the Alberta Act for a period of one year from the date of the Agreement, it would seek in writing the written permission of the Executive Director, (iii) agreed to notify the securities commissions of any other Canadian jurisdictions in which violations of applicable securities legislation occurred, and (iv) agreed to pay the costs of the investigation. The Individual Respondents (i) undertook that they would make themselves aware of the requirements of the Alberta Act and would comply with the Alberta Act in the future, and (ii) undertook to the Executive Director not to sell the securities of Wi-LAN for a period of 18 months from the date of the Agreement.

16. Dr. Hatim Zaghloul was also a director of Cell-Loc Inc. ("Cell-Loc") in 1997. Prior to its initial public offering in 1997, Cell-Loc failed to file reports within the required time period in connection with seven exempt issuances of securities completed in reliance on the exemptions contained in subsections 107(1)(l) and (z) of the Alberta Act. In addition, Cell-Loc issued common shares and a one-time option to purchase additional common shares to a company in consideration for technology without proper exemptions from the registration and prospectus requirements of the Alberta Act. As a result of the foregoing, Cell-Loc, Dr. Hatim Zaghloul and an officer of Cell-Loc entered into a Settlement Agreement and Undertaking with the ASC pursuant to which Dr. Hatim Zaghloul and the officer of Cell-Loc (i) undertook to make themselves aware of, and comply with, the requirements of the Alberta Act in the future; (ii) agreed to obtain legal advice from an active member of the Law Society of Alberta practicing in the area of securities law regarding the use of statutory exemptions contained in the Alberta Act prior to causing Cell-Loc to issue securities in reliance on such exemptions; and (iii) paid $1,000 to the ASC towards the costs of the investigation.

17. NTG has a significant connection to Ontario for the purposes of CDNX Policy 3.1 by virtue of the fact that NTG has registered and beneficial shareholders resident in Ontario who own more than 20% of the issued and outstanding Common Shares of NTG.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest;

IT IS HEREBY ORDERED pursuant to subsection 83.1(1) of the Act that NTG be deemed a reporting issuer for the purpose of the Act.

February 21, 2002.

“Iva Vranic”

2.2.4 T S Telecom Ltd. - ss. 83.1(1)

Headnote

Subsection 83.1(1) - issuer deemed to be a reporting issuer in Ontario - issuer has been a reporting issuer in British Columbia since January 20, 1986 and in Alberta since October 14, 1987 - issuer listed and posted for trading on the Canadian Venture Exchange - continuous disclosure requirements of British Columbia and Alberta substantially identical to those of Ontario.

Statutes Cited

Securities Act, R.S.O. 1990, c.S.5, as am., ss. 83.1(1).

IN THE MATTER OF
THE SECURITIES ACT
R.S.O. 1990, CHAPTER S.5, AS AMENDED
(the "Act")

AND

IN THE MATTER OF
T S TELECOM LTD.

ORDER
(Subsection 83.1(1))

UPON the application of T S Telecom Ltd. (the "Company") for an order pursuant to subsection 83.1(1) of the Act deeming the Company to be a reporting issuer for the purposes of Ontario securities law;

AND UPON considering the application and the recommendation of the staff of the Commission;

AND UPON the Company representing to the Commission as follows:

1. The Company was incorporated under the Company Act (British Columbia) on May 7, 1984 as Minotaur Explorations Ltd. The Company changed its name to China Growth Enterprises Corp. on September 12, 1994. Pursuant to Articles of Continuance dated January 22, 1996, the Company was continued under the laws of the Province of Ontario and changed its name to T S Telecom Ltd.

2. The head office of the Company is located at 180 Amber Street, Markham, Ontario L3R 3J8.

3. Pursuant to Articles of Continuance dated January 22, 1996, the Company increased its authorized share capital to an unlimited number of common shares without nominal or par value and an unlimited number of preferred shares without nominal or par value. As at September 14, 2001, the Company had 21,990,005 common shares issued and outstanding.

4. The Company has 13,632,808 common shares of the Company, or approximately 62% of the total issued common shares of the Company, registered to shareholders whose last address on the Company's register of shareholders was in Ontario, as at September 14, 2001.

5. The Company is and has been a reporting issuer under the Securities Act (British Columbia) (the "BC Act") since January 20, 1986 and under the Securities Act (Alberta) (the “Alberta Act”) since October 14, 1987. The Company is not in default of any requirements of the BC Act and Alberta Act.

6. The Company is not a reporting issuer in Ontario, and is not a reporting issuer, or equivalent, in any other jurisdiction, except British Columbia and Alberta.

7. The continuous disclosure requirements of the BC Act and the Alberta Act are substantially the same as the requirements under the Act.

8. The continuous disclosure materials filed by the Company under the BC Act and under the Alberta Act since the inception of the System Electronic Document Analysis and Retrieval (SEDAR) are available on SEDAR.

9. The common shares of the Company are listed on the CDNX, and the Company is in compliance with all requirements of the CDNX.

10. The Company has not been subject to any penalties or sanctions imposed against the Company by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority, and has not entered into any settlement agreement with any Canadian securities regulatory authority.

11. Neither the Company nor any of its officers, directors nor, to the knowledge of the Company, its officers and directors, any of its controlling shareholders, has: (i) been the subject of any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority, (ii) entered into a settlement agreement with a Canadian securities regulatory authority, or (iii) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision.

12. Neither the Company nor any of its officers, directors, nor to the knowledge of the Company, its officers and directors, any of its controlling shareholders, is or has been subject to: (i) any known ongoing or concluded investigations by: (a) a Canadian securities regulatory authority, or (b) a court or regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or (ii) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.

13. None of the officers or directors of the Company, nor to the knowledge of the Company, its officers and directors, any of its controlling shareholders, is or has

been at the time of such event an officer or director of any other issuer which is or has been subject to: (i) any cease trade or similar orders, or orders that denied access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, within the preceding 10 years; or (ii) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.

14. Neither the Company nor any of its officers, directors, nor to the knowledge of the Company, its officers and directors, any of its controlling shareholders, is or has been subject to (i) any known ongoing or concluded investigations by (a) a Canadian securities regulatory authority, or (b) a court or regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision.

AND UPON the Director being satisfied that to do so would not be prejudicial to the public interest;

IT IS HEREBY ORDERED pursuant to subsection 83.1(1) of the Act that the Company be deemed a reporting issuer for purposes of Ontario Securities Law.

February 21, 2002.

"Iva Vranic"

2.2.5 WorkGroup Designs Ltd. - ss. 83.1(1)

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S. 5, AS AMENDED
(the "Act")

AND

IN THE MATTER OF
WORKGROUP DESIGNS LTD.

ORDER
(Subsection 83.1(1))

UPON the application of WorkGroup Designs Ltd. ("WorkGroup") for an order pursuant to subsection 83.1(1) of the Act deeming WorkGroup to be a reporting issuer for the purposes of Ontario securities law;

AND UPON considering the application and the recommendation of the staff of the Commission;

AND UPON WorkGroup representing to the Commission as follows:

1. WorkGroup was incorporated on April 12, 2000 under the Business Corporations Act (Alberta) under the name ebisdot.com inc. On November 12, 2001 the name of the company was changed to its current name in connection with the completion of a Qualifying Transaction, as defined in Canadian Venture Exchange Inc. ("CDNX") Policy 2.4.

2. The head office of WorkGroup is located in Vaughan, Ontario.

3. WorkGroup has been a reporting issuer under the Securities Act (Alberta) (the "Alberta Act") since December 1, 2000 when it received a receipt for its CPC Prospectus, as defined in CDNX Policy 2.4, and under the Securities Act (British Columbia) (the "BC Act") since March 26, 2001 when its common shares were listed and posted on CDNX, and is not in default of any of the requirements of the Alberta Act or the BC Act or the regulations made thereunder. WorkGroup is not a reporting issuer or equivalent under the securities legislation of any other jurisdiction in Canada.

4. The continuous disclosure requirements of the Alberta Act and the BC Act are substantially the same as the requirements under the Act.

5. The continuous disclosure materials filed by WorkGroup under the Alberta Act and the BC Act since July 28, 2000 are available on the System for Electronic Document Analysis and Retrieval ("SEDAR").

6. The authorized share capital of WorkGroup consists of an unlimited number of common shares and an unlimited number of first and second preferred shares, of which 14,999,336 common shares and no first or second preferred shares were issued and outstanding as of January 10, 2002.

7. WorkGroup has a significant connection to Ontario in that: (i) its head office is situated in Ontario; (ii) all directors and officers, with the exception of one director, are resident in Ontario; and (iii) as at January 10, 2002, 13,299,336 common shares, or approximately 89% of the number of common shares issued and outstanding, were registered in the names of shareholders whose last address on the company's register of shareholders were in Ontario.

8. The common shares of WorkGroup are listed and posted for trading on CDNX and to the best of its knowledge, WorkGroup is in good standing under the rules, regulations and policies of CDNX. WorkGroup was initially designated as a capital pool company by CDNX but such designation was removed by CDNX upon the completion of WorkGroup's Qualifying Transaction on January 2, 2002.

9. The CPC Information Circular, as defined in CDNX Policy 2.4, delivered to shareholders of WorkGroup in connection with their consideration of the Qualifying Transaction contains prospectus level disclosure on the Qualifying Transaction and the resulting issuer and has been filed and is available on SEDAR.

10. WorkGroup has not been subject to any penalties or sanctions imposed against WorkGroup by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority, and has not entered into any settlement agreement with any Canadian securities regulatory authority.

11. Neither WorkGroup nor any of its officers, directors, or shareholders holding sufficient securities of WorkGroup to affect materially the control of WorkGroup, is or has been subject to: (i) any known ongoing or concluded investigations by: (a) a Canadian securities regulatory authority, or (b) a court or regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or (iii) any bankruptcy or insolvency proceedings, or other proceedings or arrangements.

12. None of the directors or officers of WorkGroup, nor any of its shareholders holding sufficient securities of WorkGroup to affect materially the control of WorkGroup, is or has been at the time of such event, an officer or director of any other issuer which is or has been subject to: (i) any cease trade or similar orders, or orders that denied access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, within the preceding 10 years; or (ii) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver manager or trustee, within the preceding 10 years.

13. Neither WorkGroup nor any of its officers, directors, or any of its shareholders holding sufficient securities of WorkGroup to affect materially the control of WorkGroup has: (i) been the subject of any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority, (ii) entered into a settlement agreement with a Canadian securities regulatory authority, or (iii) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest;

IT IS HEREBY ORDERED pursuant to subsection 83.1(1) of the Act that WorkGroup be deemed a reporting issuer for the purposes of the Act.

February 16 , 2002.

"Iva Vranic"

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Chapter 3

Reasons: Decisions, Orders and Rulings

THERE IS NO MATERIAL FOR THIS CHAPTER

IN THIS ISSUE

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Extending & Rescinding Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Extending Order	Date of Rescinding Order
Armac Capital Corp.	21 Feb 02	05 Mar 02		
DMR Resources Ltd	25 Feb 02	08 Mar 02		
Enwave Corporation	27 Feb 02	11 Mar 02		
Magra Computer Technologies Corp.	21 Feb 02	05 Mar 02		
New Inca Gold Ltd	22 Feb 02	06 Mar 02		
Peachtree Networks Inc.	25 Feb 02	08 Mar 02		
Photochannel Networks Inc.	27 Feb 02	11 Mar 02		
Travelbyus.Com Ltd.	27 Feb 02	11 Mar 02		
Trinexus Holdings Ltd.	27 Feb 02	11 Mar 02		
Voiceiq Inc.	25 Feb 02	08 Mar 02		

4.2.1 Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Extending Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Allnet Secom Inc.	26 Feb 02	11 Mar 02			

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Chapter 5

Rules and Policies

THERE IS NO MATERIAL FOR THIS CHAPTER

IN THIS ISSUE

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6.1.1 Concept Proposal 81-402

Concept Proposal 81 - 402

Striking a New Balance:

A Framework for Regulating Mutual Funds and their Managers

Concept Proposal of the Canadian Securities Administrators

March 1, 2002

An overview

What is this concept proposal about?

In this paper the Canadian Securities Administrators (the CSA or we):

- outline the CSA's renewed vision for mutual fund regulation in Canada; and
- detail proposals to reform the current regulatory framework—including our proposals to improve mutual fund governance.

A truism: the importance of the mutual fund industry to Canadian consumers

We know we state the obvious when we remark that the mutual fund industry in Canada has experienced tremendous growth in the last two decades. Its equally obvious that Canadian investors continue to place unprecedented amounts of money into mutual funds and other similar investment vehicles. The assets under management by mutual fund managers have grown more than threefold since Glorianne Stromberg published her seminal report recommending changes to our mutual fund regulation in 1995.[1] As of January 31, 2002, Canadians had invested $427 billion in over 2,500 mutual funds managed by some 75 mutual fund managers. Based on demographics we know this trend will continue and will likely accelerate.[2] Certainly a sizeable amount of public money and, by extension, public trust is invested—and will continue to be invested —in this key segment of the financial services marketplace.

Our mandate

We are charged with regulating this maturing industry and it is incumbent upon us to ensure that our regulation keeps pace not only with the complexity and creativity of the industry, but also with global standards. We must strike the correct balance between protecting investors and fostering fair and efficient capital markets where healthy competition and innovation can operate to multiply investment choices and services. All the while, we must be cognizant of the fact that the Canadian mutual fund industry operates in an increasingly global marketplace where adherence to world standards will be central to its continued success.

Our thesis

In recent years, a number of voices have called for improved mutual fund governance and other changes to the way we regulate mutual funds in Canada. This concept proposal underscores our agreement with earlier commentators that a well-defined fund governance system—one that relies on increased scrutiny of fund managers by independent groups charged with looking after investors' best interests—is a desirable thing.

But while we accept the need for improved fund governance, we are not interested in simply layering new regulation on top of old. We think it is important to understand the goals of fund governance and where they fit within the broader context of mutual fund regulation. The result is a proposal than goes beyond

[1] *Regulatory Strategies for the Mid-'90s: Recommendations for Regulating Investment Funds in Canada*, prepared by Glorianne Stromberg for the Canadian Securities Administrators, January 1995.

[2] During a luncheon address at the 2001 Dialogue with the OSC, Randall Powley, Chief Economist of the Ontario Securities Commission, explained that "while the percentage of Canadians entering the publicly traded markets may be close to a peak, the funds committed to those markets should triple or quadruple in the next 10-15 years…. As the urgency to ensure the integrity of retirement savings increases with the looming of boomer retirement, the quality of advice will come under increasing pressure".

simply recommending fund boards. This concept proposal describes a renewed framework for regulating mutual funds and their managers that is congruous and comprehensive yet flexible and tailored to suit the Canadian mutual fund industry.

Our desire for an informed dialogue

We launched the current foray into regulatory reform by asking Stephen Erlichman, a senior partner of Fasken Martineau DuMoulin LLP in Toronto, to provide us with a summary of the fund governance discussion in Canada and abroad and to make specific recommendations to improve fund governance. We released his report entitled *Making it Mutual: Aligning the Interests of Investors and Managers: Recommendations for a Mutual Fund Governance Regime for Canada* during the summer of 2000 to generally further the discussion on this subject and to elicit further comment.[3]

Since we released Mr. Erlichman's report, we have consulted widely on the topic of fund governance with industry participants, their legal and accounting advisers, legal scholars, and international mutual fund regulators. At the same time, we took this opportunity to learn more about the industry and its practices.

The background reports: our empirical and legal research

We began our empirical research by reviewing what mutual funds say about their governance practices in their annual information forms (a required disclosure item since February 1, 2000). We then held face-to-face interviews with more than a third of the mutual fund managers across Canada, travelling from Québec to British Columbia. Finally, we sent an electronic survey to each fund manager with fund governance experience and worked to obtain a 100 percent response rate. We are satisfied that our research has given us additional insight on the business realities of the Canadian mutual fund industry. Staff of the Ontario Securities Commission (the OSC) have summarized this research in a background paper to this concept proposal entitled *The Canadian Mutual Fund Industry: Its Experience With and Attitudes Toward Mutual Fund Regulation: A Background Research Report to Concept Proposal 81-402 of the Canadian Securities Administrators*. We refer to this background paper as the staff research paper.

Our understanding of the mutual fund business is complemented by our research into the legal environment mutual fund managers operate in. We know that most mutual funds in Canada are structured as trusts, therefore we retained David Stevens, a trust law expert with Goodman and Carr LLP in Toronto. Mr. Stevens has prepared a second background paper to this concept proposal entitled *Trust Law Implications of Proposed Regulatory Reform of Mutual Fund Governance Structures*. In this paper, Mr. Stevens analyses the private law context in which mutual funds currently operate and suggests ways in which a fund governance regime can be created using that body of law. We refer to this background paper as the Stevens legal research paper.

[3] *Making it Mutual: Aligning the Interests of Investors and Managers – Recommendations for a Mutual Fund Governance Regime for Canada* Prepared for the Canadian Securities Administrators by Stephen I. Erlichman, Senior Partner, Fasken Martineau DuMoulin LLP, June 2000.

Thank you

We appreciate the many industry participants—including the members of the Fund Governance Committee of the Investment Funds Institute of Canada—who have generously shared their time and thoughts with us.

The background to this concept proposal

These are the main sources we consulted when developing our proposals:

On mutual funds and mutual fund governance:

- *Making it Mutual: Aligning the Interests of Investors and Managers – Recommendations for a Mutual Fund Governance Regime for Canada,* prepared for the Canadian Securities Administrators by Stephen I. Erlichman, June 2000
- *Regulatory Strategies for the Mid-'90s – Recommendations for Regulating Investment Funds in Canada,* prepared by Glorianne Stromberg for the Canadian Securities Administrators, January 1995
- *Investment Funds in Canada and Consumer Protection: Strategies for the Millennium* by Glorianne Stromberg, October 1998
- *The Stromberg Report: An Industry Perspective,* prepared by the Investment Funds Steering Group for the Canadian Securities Administrators, November 1996
- *The Modernization of the Normative Framework in the Québec Context*, prepared by the Consultative Committee on the Regulation of Mutual Funds, January 1997
- *Report of the Canadian Committee on Mutual Funds and Investment Contracts – Provincial and Federal Study, 1969,* Queen's Printer, 1969
- *The Governance Practices of Institutional Investors,* by the Standing Senate Committee on Banking, Trade and Commerce, November 1998
- *Regulating Conflicts of Interest in the Management of Mutual Funds: the Current Regime,* Report by staff of the Ontario Securities Commission, March 1995
- *Assessing Risks & Controls of Investment Funds, Guidance for Directors, Auditors and Regulators,* A Research Report by The Canadian Institute of Chartered Accountants, October 1999

On corporate governance:

- *Where were the Directors? Guidelines for Improved Corporate Governance in Canada,* Report of the Toronto Stock Exchange Committee on Corporate Governance in Canada, December 1994 (the Dey Report)
- *Report on Corporate Governance, 1999 Five Years to the Dey*,Toronto Stock Exchange, 1999
- *Beyond Compliance: Building a Governance Culture,* Final Report of the Joint Committee on Corporate Governance, November 2001 (the Saucier Report)

On international perspectives:

The following reports by the Technical Committee of the Organization of International Securities Commissions (IOSCO) on collective investment scheme (mutual fund) regulation are available on the IOSCO website at www.iosco.org.

- *Report on Investment Management – Principles for the Regulation of Collective Investment Schemes and Explanatory Memorandum* July 1995
- *Objectives and Principles of Securities Regulation* September 1998
- *Summary of Responses to Questionnaire on Principles and Best Practices Standards on Infrastructure for Decision Making for CIS Operators* May 2000
- *Conflicts of Interest of CIS Operators* May 2000
- *Delegation of Functions* December 2000

Your comments

We are keen to have your input. We believe an open dialogue with the industry and consumers is necessary if we are to fashion an effective regulatory regime for mutual funds and their managers. We have raised specific issues for you to comment on in shadowboxes (such as this one) throughout this paper. We also welcome your comments on other aspects of the concept proposal, including our general approach and anything that might be missing from it.

Comments are due by June 7, 2002 and should be sent to the CSA care of:

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
19th floor, Box 55
Toronto, ON, M5H 3S8
Telephone: 416-593-8145
Fax: 416-593-2318
e-mail: jstevenson@osc.gov.on.ca

and

Denise Brousseau, Secretary
Commission des valeurs mobiliéres du Québec
800 Victoria Square, Stock Exchange Tower
P.O. Box 246, 22nd Floor
Montreal, Québec H4Z 1G3
Telephone: 514-940-2150
Fax: 514-864-6381
e-mail: consultation-en-cours@cvmq.com

If you are not sending your comments by e-mail, please send us two copies of your letter, together with a diskette containing your comments (in either Word or WordPerfect format). We cannot keep submissions confidential because securities legislation in certain provinces requires us to publish a summary of written comments received during the comment period.

How to read this paper

Plain language
We wrote this concept proposal in plain language to make it understandable to a broad audience. To ease your review of our proposals, we have not quoted from background sources, although we cite them where relevant. We have assumed that most readers are already familiar with much of the background discussion on mutual fund governance.

Numbering
Our recommendations are presented in numbered paragraphs for ease of reference.

Text boxes
The text boxes (such as this one) throughout the paper include information that may be of interest to readers, such as:

- background or explanatory information; and
- alternatives to the proposals we are forwarding.

Background reports
We are publishing this concept proposal together with two background papers:

- *The Canadian Mutual Fund Industry: Its Experience With and Attitudes Toward Mutual Fund Regulation: A Background Research Paper to Concept Proposal 81-402 of the Canadian Securities Administrators*, prepared by staff of the Ontario Securities Commission; and

- *Trust Law Implications of Proposed Regulatory Reform of Mutual Fund Governance Structures,* prepared by David Stevens of Goodman and Carr LLP, Toronto.

Readers seeking more information on the legal backdrop and analysis or the empirical research supporting this concept proposal are referred to these background papers. They are available on the OSC website at www.osc.gov.on.ca and also on the websites of other provincial regulators, the British Columbia Securities Commission at www.bcsc.bc.ca, the Alberta Securities Commission at www.albertasecurities.com. French translations of the concept proposal and the staff research paper are available on the website of the Commission des valeurs mobilières du Québec at www.cvmq.com.

You can also call 1-877-785-1555 toll-free to ask a member of the OSC's Contact Centre to mail these background reports to you. The OSC's Contact Centre can also tell you how you can get copies of many of the background reports we list in the text box above.

A. Our vision for mutual fund regulation

As the mutual fund industry in Canada has grown and matured, there has been a corresponding evolution in our understanding of mutual fund regulation. Mutual fund regulation can no longer be seen as an addendum to, or a variation on, the larger body of securities legislation; instead, it must be understood on its own terms. Rather than simply adding to existing regulation, we believe it is important to consider a renewed framework for regulating mutual funds and their managers. Such a comprehensive framework will ensure that this and future proposals for regulatory reform work towards a coherent end.

Our proposed framework compared to the current regime

We propose a renewed framework for regulating mutual funds and their managers that will rest on five pillars.

I. Registration for mutual fund managers

II. Mutual fund governance

III. Product regulation

IV. Disclosure and investor rights

V. Regulatory presence

Some of these pillars are already firmly ensconced within our existing regulation while others are only partially built, or are not present at all. The following table compares and contrasts the current regime with our proposed framework.

Current Regime	Proposed Framework
Mutual fund managers are not registered as such Mutual fund managers are only registered with securities commissions if they trade in fund securities (acting as dealers) or manage the assets of individual funds (acting as advisers/portfolio managers). Some mutual fund managers are not registered at all because they do not themselves carry on the activities that we currently regulate. The registration requirements for dealers and advisers are not tailored to mutual fund managers.	**A new registration category for mutual fund managers** We will regulate who can act as a mutual fund manager by creating a new registration category, with tailored conditions of registration, for mutual fund managers. New minimum standards will be imposed on mutual fund managers through conditions of registration that are designed for the business of managing mutual funds.

Current Regime	Proposed Framework
No independent oversight of the mutual fund manager and a conflicts regime based on prohibitions The current regulation does not mandate independent oversight of the mutual fund manager. However, mutual fund managers are bound by a standard of care set out in certain provincial securities legislation. In Ontario, for example, mutual fund managers must exercise their responsibilities honestly, in good faith and in the best interests of the mutual fund and must exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.[4] Mutual fund managers are also accountable under our rules for the actions of service providers to the funds. Securities legislation of some provinces, for example Part XXI of the *Securities Act* (Ontario), regulates conflicts of interest by prohibiting certain transactions between related parties associated with mutual funds.[5]	**A new fund governance regime to ensure independent oversight of mutual fund managers and to minimize conflicts of interest** A group that is independent of the mutual fund manager, called a governance agency, will oversee that manager's management of its mutual funds. This governance agency will owe its allegiance to investors and will ensure that the mutual fund manager acts in the best interests of investors. Mutual fund managers will continue to be bound by a standard of care that requires them to act in the best interests of the mutual fund. They will also continue to be responsible for the actions of service providers. Mandated fund governance will allow us to move from a transactional, prohibition based approach to regulating conflicts of interest to one that relies on oversight by independent governance agencies.
Detailed product regulation for mutual funds We regulate the structure and operation of mutual funds through National Instrument 81-102 Mutual Funds which sets out detailed rules on areas such as: ▪ investment restrictions and practices, ▪ seed capital for new mutual funds, ▪ custodianship of fund assets, ▪ sales and redemption procedures, ▪ calculations of net asset value. Other securities regulation also applies to mutual funds.	**Streamlined product regulation for mutual funds** We will continue to regulate the structure and operation of mutual funds in much the same way we do today; however, we will be re-evaluating each of the detailed rules currently contained in National Instrument 81-102 Mutual Funds, as well as other applicable securities regulation. Where it is warranted, these rules will be eliminated or will be replaced by broader regulatory principles or guidelines and a requirement that each independent governance agency monitor how these are met by each fund manager.

[4] Section 116 of the *Securities Act* (Ontario). Also see section 157 of the *Securities Act* (Alberta), section 125 of the *Securities Act* (British Columbia), section 124 of the *Securities Act* (Nova Scotia) and section 25 of the *Securities Act* (Saskatchewan). Section 235 of the Regulation made under the *Securities Act* (Québec) imposes a similar standard of care on "registered persons", including dealers and portfolio managers.

[5] The following provinces also have conflict provisions in their legislation: Alberta, British Columia, Nova Scotia, Saskatchewan and Québec.

Current Regime	Proposed Framework
Disclosure and investor rights Mutual funds must give investors certain information in a prospectus at the time they invest and continuous disclosure documents for so long as they remain invested. National Instrument 81-101 Mutual Fund Prospectus Disclosure sets a national standard for mutual fund prospectuses. Provincial securities legislation regulates continuous disclosure requirements. Mutual fund managers are accountable under securities legislation to investors for the information in their mutual funds' prospectuses. Investors have rights to vote on any fundamental changes proposed to their mutual fund as set out in National Instrument 81-102 Mutual Funds. Sales communications are regulated by National Instrument 81-102 Mutual Funds.	**Continued disclosure and investor rights** Investors will continue to receive a prospectus at the time they invest and continuous disclosure documents for so long as they remain invested in a mutual fund. It is important to remember that if we simplify product regulation, disclosure to investors on the specifics of their investments becomes even more crucial. Investors will continue to have rights in the face of fundamental changes, but we will re-examine how investor rights fit in with fund governance. We will continue to regulate sales communications.
Regulatory presence Members of the CSA that are mutual fund jurisdictions (principal regulators for mutual fund filings) look for compliance with their legislation primarily by reviewing prospectuses. Some CSA members, notably the Ontario Securities Commission, are increasingly conducting on-site compliance examinations.[6] Enforcement actions are taken where warranted.	**Enhanced regulatory presence** Principal regulators of mutual funds will enforce compliance with regulation through desk reviews of prospectus, continuous disclosure, and sales communication documents. On-site compliance examinations of mutual fund managers will increase. Enforcement actions will be taken if warranted.

The underlying shift in our approach to mutual fund regulation

A shift in emphasis from the mutual fund to the mutual fund manager

We currently take a hybrid approach to regulating mutual funds and their managers. On the one hand, we regulate mutual funds via the general body of securities legislation, which has been modified to suit the mutual fund context. On the other hand, we have developed a body of specialized rules reflecting the unique nature of mutual funds, their management, and their distribution structures.

The portion of our regulation that is derived from general securities legislation rests on the underlying assumption that mutual funds are simple issuers of securities and that investors buy mutual fund securities in

[6] The following provincial regulators also conduct on-site compliance examinations of mutual fund managers that are registered as investment counsel/portfolio manager and mutual fund dealers: Alberta, British Columbia, Québec and New Brunswick. Manitoba intends to commence these in 2002. Ontario conducts examinations of non-registered mutual fund managers.

much the same way as they buy corporate securities. These assumptions led securities regulators to treat mutual funds as "reporting issuers" of securities and as though they were public corporations.

In contrast, our specialized product regulation grew up to ensure retail investors are offered a safe and reliable investment vehicle. The central feature of mutual funds is that they are redeemable on demand and much of the regulation operates to ensure that this feature can be met. Also, since mutual funds are investment vehicles essentially designed for mass distribution to retail investors, product regulation is designed to ensure consistency in the product.

The emphasis in our current regulation is placed squarely on the mutual fund itself as an issuer of securities. The mutual fund manager and its management of its mutual funds is less important. Without an emphasis on regulating fund managers or the overall management relationships, regulation of the structure of a mutual fund as a reporting issuer is critical.

We believe our current regulation, with its relative lack of emphasis on mutual fund managers, does not reflect the commercial realities of mutual fund management or investing. When mutual fund investors put their money in a mutual fund, they are purchasing the skill of that fund's manager as much as they are purchasing a security. Mutual funds are much more than free-standing issuers or products that exist independently of the mutual fund manager that creates and operates them. If mutual fund regulation is to more accurately reflect this commercial reality, we believe it must place greater emphasis on mutual fund managers and their activities.

Why our proposed framework will strike a better balance than the current regime

The current regulatory approach to conflicts of interest

As the Stevens legal research paper and other background reports explain,[7] conflicts of interest are inherent in most mutual fund structures. The investor's "ownership" of a mutual fund is separate from the fund manager's management and control of that mutual fund. Hence, the potential exists for the interests of investors to diverge from the interests of the fund manager. The potential that the self-interest of mutual fund managers will conflict with the interests of investors is further exacerbated by the power imbalance between mutual fund managers and investors. The reality is that Canadian investors have neither the resources nor the inclination to effectively oversee the managers of their mutual funds.

Regulators seek to alleviate the potential for abuse that arises from the realities we describe. Regulating these conflicts of interest is a priority for mutual fund regulators, both in Canada and internationally. As a

[7] See the Stevens legal research paper; *Regulatory Strategies for the Mid-'90s – Recommendations for Regulating Investment Funds in Canada*, prepared by Glorianne Stromberg for the Canadian Securities Administrators, January 1995; *Regulating Conflicts of Interest in the Management of Mutual Funds: the Current Regime*, report of staff of the Ontario Securities Commission, March 1995; and the paper by the Technical Committee of IOSCO, *Conflicts of Interest of CIS Operators* May 2000 for a detailed description of the different types of conflict that may arise in the mutual fund context. These publications also discuss the reasons for regulating conflicts.

recent paper by the Organization for Economic Co-operation and Development (OECD)[8] explains, there are at least two approaches to regulating conflicts in the mutual fund context:

> One approach to possible conflicts of interest would be for CIS [collective investment scheme or mutual fund] regulators to impose highly restrictive rules and wide-ranging prohibitions…. Most analysts believe that this approach would be excessively rigid. Instead most countries have created well-defined but flexible governance frameworks consisting of two parts: 1) accepted standards of conduct that combine official rules and industry best practice; and 2) well-defined legal and regulatory environments for CIS in which certain designated parties are charged with scrutinizing the activity of the CIS for conformity with those standards.

While most jurisdictions have opted for an approach based on independent oversight of the mutual fund manager, Canadian regulators have to-date responded to potential conflicts of interest by simply prohibiting certain relationships or transactions by mutual fund managers.[9]

Criticisms of our current regulatory approach

Although our prohibition-based approach to regulating conflicts of interest may be a straightforward way to avoid abuses, we recognize its shortcomings. We know that the current approach is too restrictive on the one hand—because it prohibits transactions that are innocuous or even beneficial to investors—and not inclusive enough on the other—because it only deals with certain specific transactions. We recognize that we cannot say that we have achieved a complete prohibition against all potential conflicts of interest. For example, our regulation does not address:

- cost allocations between fund managers and the mutual funds they manage,
- the expenses a fund manager can charge to its mutual funds,
- proxy voting, or
- the allocation of assets amongst funds and the fund manager.

We also must acknowledge that, as regulators, we often do not have the necessary insight into a fund manager's business to know when to give discretionary relief from our prohibitions.

Benefits of our proposed framework

As we explained above, we are shifting our regulatory focus from the mutual fund itself to the mutual fund manager, its relationships, and activities. Conflicts of interest under our proposed framework would be regulated through a governance regime rather than restrictive rules and wide-ranging prohibitions. Improved mutual fund governance represents a structural solution to the inherent conflicts, it avoids the criticisms of our current regime, and it offers the following benefits:

Simplicity and flexibility. Our proposed approach to mutual fund regulation will streamline mutual fund regulation by replacing detailed rules with broader principles. It will also be flexible enough to keep pace

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[8] *Governance Systems for Collective Investment Schemes in OECD Countries* by John K. Thompson and Sang-Mok Choi of the Directorate for the Financial, Fiscal and Enterprise Affairs, Financial Affairs Division Occasional Paper, No.1, April 2001 at 10.

[9] Although regulators have been given broad discretion to grant relief from those prohibitions, this discretion generally is exercised in narrow circumstances.

with continuing changes to our maturing mutual fund industry. We believe the proposed approach may prevent problems from occurring and will enhance investor protection through bolstering fund manager responsibility and accountability.

Consistency with global standards. As the OECD paper highlights, Canada is one of the few remaining countries in the world that does not mandate some form of independent mutual fund governance. For this reason, Canadian mutual fund regulation is considered to be incomplete by some international regulators and industry participants. Reforming our mutual fund regulation to make it consistent with global regulatory standards will improve the Canadian industry's reputation as a well regulated and governed industry and may afford Canadian mutual funds easier access to international markets where foreign mutual funds are allowed entry, such as Hong Kong.

Consistency within the industry. In the absence of a fund governance regime, various industry practices have grown up to ensure that mutual fund managers remain accountable to investors. Some managers have independent governance and written policies and procedures while others ask individuals associated with the manager to oversee their activities and many managers have no governance procedures at all. The proposed approach will bring consistency to the industry by requiring all managers to formally account for their actions and will impose a single standard across the country.

Through our renewed framework we expect to achieve a more balanced approach to regulation—one that will seek to alleviate potential abuses that might arise from conflicts of interest and that will address the asymmetry inherent in mutual fund investing. Our new regulation will be designed to be proactive and will emphasize the responsibilities of industry participants.

Are there alternatives?

Although this concept proposal sets out specific regulatory proposals, we considered other alternatives, including alternatives suggested to us by the industry (these are outlined in the staff research paper). The primary alternatives we considered are described here. We invite your comments on these, and any other alternatives.

Alternative 1 – A non-regulatory approach

We considered whether it would be possible to improve fund governance across Canada without imposing a comprehensive body of new rules. Under a non-regulatory approach, we would encourage the Investment Funds Institute of Canada (IFIC), the trade association for the investment funds industry in Canada, to produce a set of best practice guidelines for fund governance that its members would adopt voluntarily. We would amend our disclosure rules to require mutual funds to compare their governance practices against these industry best practices. A mutual fund would undertake this comparison annually in conjunction with its annual prospectus renewal.

This approach has parallels in recent Canadian corporate governance developments—the Dey Report and now the Saucier Report advocate in favour of voluntary guidelines coupled with disclosure.

This approach would put investors in a position to consider a mutual fund's governance practices in their assessment of the fund. If investors come to believe that mutual fund governance is an important part of their investment decision, they will demand that mutual funds explain any material variations between their actual practice and the guidelines. Their ensuing investment decisions would bring competitive pressure to bear on the industry to adopt good governance practices. This approach is based on the theory that market dynamics would determine whether the benefits of independent governance would exceed the costs.

Under this approach we would re-examine our existing product regulation in a manner consistent with Part III and IV of this concept proposal.

Under this non-regulatory approach, we would not develop a specialized registration regime for mutual fund managers. We would consider, on a case by case basis, how we would deal with any fund managers who are not already registered with us as dealers or advisers.

We ask you to consider this alternative in light of the following:

- While the Dey Report guidelines for good corporate governance build on a well-established body of corporate law and practice (one that includes a basic requirement for a board of directors with defined duties and responsibilities), voluntary guidelines for mutual fund governance would have no such legal underpinning to support it. The core fund governance concepts—particularly the requirement that there be an independent fund governance agency, with a majority of independent members, and subject to a standard of care—would not have the force of law. Members of a governance agency would have no clarity on their legal responsibilities and duties.

- This alternative assumes that mutual fund investors will read and understand fund governance disclosure and vote with their feet if they disagree with the approach taken. The Dey Report approach to corporate governance is consistent with the overall regulatory approach to public corporations. Investors in public corporations can rely on institutional investors and analysts to read and analyse the material. Information about the governance of public companies is, in this fashion "public" in a way that has no parallel in the mutual fund context.

- Mutual funds are complex products offered by a complex industry. Much of our current mutual fund regulation is designed to bring consistency and clarity to investors and industry participants. Industry governance guidelines that need not be adopted, or that may be adapted to suit a fund complex, would not necessarily result in consistency or uniform safeguards or improved fund governance.

Alternative 2 – Reliance on enhanced duties for auditors or an enhanced role for the regulator

We considered whether the auditors of mutual funds or the regulators could play a greater role in overseeing management of mutual funds. Although we agree that auditors can provide opinions on aspects of good governance, broadly defined, we do not believe the audit function can be a substitute for good governance practices. The discretion necessary for decision-making in this area must rest with a body such as a governance agency and cannot be shifted to the auditors. As regulators we cannot effectively oversee the business of individual fund managers to the same extent as independent governance agencies, although we do propose to enhance our regulatory presence as part of our renewed framework.

Alternative 3 – Require fund managers to create an independent governance agency, but allow them complete freedom to determine its structure, roles and responsibilities

We also considered whether we should give each mutual fund manager the freedom to design its own governance agency as it sees fit. While this approach would provide some measure of independent oversight while providing the mutual fund industry with more flexibility, we are not convinced this approach would achieve our objectives in reforming our regulation. Too much flexibility would likely lead to a diversity of approaches and a lack of rigor in the oversight provided by these governance agencies. It is difficult to argue for changes in our product regulation and conflicts of interest provisions unless we articulate what we expect from each governance agency.

Alternative 4 – Require fund managers to create an independent governance agency, but do not require fund managers to be registered nor define minimum standards for fund managers

We discuss this alternative in the section of this concept proposal that deals with the registration of mutual fund managers. We outline why we have not accepted this alternative at that juncture.

Issues for comment

01. We see our renewed framework for regulating mutual funds as a step towards a more flexible regulatory approach, one that represents a movement away from detailed and prescriptive regulation. By streamlining our regulation, we want to create a regulatory regime that can accommodate changes within the industry and keep pace with changes in other segments of the market and global market places. What are your views on our renewed framework? Will it represent an improvement over our current model?

02. After reading the staff research paper and the text box above, what is your opinion about the alternatives to our proposed approach? If you believe we should not change the status quo, please explain why. If you favour one or more of the alternatives we set out, please explain why. Are there other alternatives that we should consider?

How our proposed framework relates to the regulation of other investment products

This concept proposal describes a renewed framework for regulating *mutual funds*. We use this term to cover the large sub-set of investment funds that are:

- sold continuously to the public by a prospectus
- redeemable on demand on a daily or weekly basis
- regulated through National Instrument 81-102 Mutual Funds
- commonly referred to as "mutual funds".

Commodity pools are specialized mutual funds. In some provinces,[10] labour sponsored investment funds are regulated as mutual funds.

We know that as we move forward, we must keep in mind the broader continuum of investment vehicles that we do not regulate as mutual funds. This continuum includes:

- pooled funds, including hedge funds, that are sold to investors under an exemption from prospectus requirements
- segregated funds, offered by insurance companies, that are regulated under insurance legislation by insurance regulators
- exchange-traded funds listed on stock exchanges
- quasi closed-end funds, redeemable only a periodic basis, usually quarterly or semi-annually
- closed-end funds listed on stock exchanges.

We believe our proposals should not create different regulatory schemes for substantially similar investment vehicles. Like products should be regulated in a like manner. The challenge is to identify which products are substantially similar in ways that justify our regulating them using similar regulatory principles and tools.

Through our participation in the Joint Forum of Financial Market Regulators,[11] we are working to harmonize the regulation of mutual funds and segregated funds. We and our insurance regulator colleagues recognize the similarities between these two investment vehicles. In December 1999, the Joint Forum published a description of the fifteen areas where work is needed to achieve harmonization.[12.] Governance and the regulation of fund managers (or insurance companies, in a segregated fund context) are two areas where the Joint Forum thinks harmonization is necessary.

[10] For example, Ontario, Saskatchewan and Manitoba regulate labour sponsored investment funds as mutual funds.

[11] The Joint Forum of Financial Market Regulators is a group made up of representatives of the CSA, the Canadian Council of Insurance Regulators and the Canadian Association of Pension Supervisory Authorities.

[12] *Recommendations for Changes in the Regulation of Mutual Funds and Individual Variable Insurance Contracts* Joint Forum of Financial Market Regulators December 15, 1999 published in the Bulletin of the Ontario Securities Commission at (1999) 28 OSCB 50.

As we move forward with our renewed framework for the regulation of mutual funds, we will be working towards meeting the challenge of determining which aspects of mutual fund regulation, if any, should also be applied to other investment vehicles.

Issues for comment

03. Do you agree that labour sponsored investment funds (where applicable) and commodity pools should be subject to the same regulatory scheme as other mutual funds (considering the specialized rules that we already have for these specialized mutual funds)? If not, why?

04 Which parts of our renewed regulatory framework should be extended or not extended to other investment vehicles—and which investment vehicles? Why do you believe the particular regulation should or should not be extended? What is the essential difference—or similarity—between the particular investment vehicles that mean they should be regulated differently or the same?

B. The proposals

We recognize that a move from our current regime to the five pillared framework for regulating mutual funds and their managers will require far-reaching reform. This concept proposal maps out what we need to do to bring our new framework into being.

We set out two new regimes for regulating mutual fund managers and their activities in the form of the following pillars:

I. registration of mutual fund managers
II. mutual fund governance

Although registration is the first pillar in our framework, we have chosen to treat mutual fund governance before registration due to the far-reaching implications of our proposals in this area.

Once we outline the two new regimes for regulating mutual fund managers, we then outline our plans to re-evaluate and refine the following parts of our existing regulation to eliminate any redundancies that may result from the addition of new regulation:

III. the existing product regulation contained in National Instrument 81-102 Mutual Funds and conflicts of interest regulation contained in securities legislation
IV. the investor rights regime.

The fifth pillar—an enhanced regulatory presence—is not addressed in this paper.

Issues for comment

05. Although we do not address the fifth pillar of our proposed framework, we invite you to give us your ideas on how we could better carry out our role as regulator.

I. Mutual fund governance

This part of the concept proposal explains how we propose to improve fund governance in Canada by requiring independent monitors to oversee the activities of mutual fund managers. This oversight is intended to ensure that mutual fund managers comply with the required standard of care and act in the best interests of investors.

What is mutual fund governance?

It is incorrect to say that we propose to introduce mutual fund governance to the industry—as our previous discussion alluded, mutual funds in Canada are already subject to many forms of governance. Instead, we believe we will *improve* mutual fund governance by ensuring that all aspects of good governance are covered.

Good governance for mutual funds requires:

- accepted standards of conduct for industry participants
- accountability of industry participants to investors
- relevant and timely information to investors and market places
- fundamental rights for investors
- independent monitoring and oversight by a group acting as a proxy for investors.

Our current regulation prescribes all of the above requirements, except for the last—independent monitoring and oversight.

Issues for comment

06. As you read this section of the concept proposal, please consider whether you believe our approach will result in mutual funds being monitored by a governance agency that:

    a. effectively oversees the management of the mutual funds
    b. has real powers and real teeth and
    c. adds value for investors.

    If you agree or disagree that our proposals will meet these goals, please tell us why. What do we need to change in order to achieve them?

07. We kept Canadian corporate governance practices in mind as we developed our proposals. Have we omitted an important principle of corporate governance that you think should apply to mutual fund governance?

1.1 The governance agency concept

1. A governing body that is independent of the mutual fund manager will supervise that manager's management of its funds and will act to ensure those mutual funds are managed in the best interests of investors. This governing body will act solely in the best interests of investors and will be largely free from conflicts of interest. We refer to this independent governing body throughout this concept proposal as a "governance agency."

2. Each governance agency will be established, and will act, according to the 10 broad governance principles outlined below. The key principles governing its design are that it be sufficiently independent of the fund manager so that conflicts of interest are minimized and that it have sufficient powers and duties to be an effective monitor.

3. Mutual fund managers will be allowed to structure mutual funds much as they do now. Each mutual fund manager will decide how to integrate the governance agency into its own fund structure.

   Thus, for a mutual fund structured as a corporation, its board of directors will be that fund's governance agency. For mutual funds structured as trusts, any of the following would qualify as the governance agency:

   - a board of individual trustees
   - a registered trust company (however if it is related to the fund manager, its board of directors must have a majority of members who are independent of the fund manager, the trust company and their respective shareholders) or
   - a board of governors interposed between the trustee of the mutual fund and the fund manager (for example, this approach could be used where the fund manager acts as trustee).

   However, the governance agency for a mutual fund trust could not be the board of directors or a committee of the board of directors of the mutual fund manager or the shareholder(s) of the mutual fund manager since those directors already owe an allegiance to their shareholders. We do not consider this form of governance agency to be independent from the mutual fund manager or its shareholders.

4. "Owner-operated" mutual funds do not raise the same conflict of interest concerns as other mutual funds. Owner-operated mutual funds are funds sold exclusively to defined groups of investors, such as members of a trade or professional association or co-operative organization, who, directly or indirectly, own the fund manager. We believe the interests of the fund manager and investors in the mutual fund are aligned in an owner-operated structure. Accordingly we will allow the board of directors of a fund manager of an owner-operated mutual fund or its shareholder(s) to act as the governance agency for these mutual funds.

A flexible approach to fund governance

Our background research, both empirical and legal, has led us to conclude that we do not need to mandate any one formal legal structure for a governance agency, so long as we establish the basic governance principles to be followed by it.

Our empirical research tells us that mutual funds in Canada are a diverse lot. They are structured and governed in a multitude of ways. Some mutual funds already have a governance agency in place. Our proposals take into account both the legal and practical realities of the Canadian mutual fund industry.

David Stevens has told us that a mutual fund is basically a contract, therefore freedom of contract prevails. He has also told us that the private law that applies to mutual funds is quite flexible. Based on Mr. Stevens' assessment, we have concluded that industry participants can legally create the governance agency we contemplate in different ways.

The Stevens legal research paper poses two central questions about the implementation of our proposals:

1. "...how as a matter of legal form or structure can a governance agency be imposed on the great variety of mutual fund structures that currently exist?

2. what precisely should the content of the governance powers and responsibilities be?"

The first question is answered in the Stevens legal research paper. We address the second question in the next part of this concept proposal.

Will our flexible approach work in Québec?

Trusts in Québec are governed by the Québec Civil Code. We understand that we must ensure that our proposals will work under the civil law of that province in ways that are comparable to the common law that applies in the rest of Canada. For this reason, we asked David Stevens to examine the implications of the Québec Civil Code for our proposals in his background paper. Mr. Stevens concludes that there is no legal reason, as a matter of civil law, why our proposed regulatory approach to fund governance cannot work for mutual funds subject to that law.

Issues for comment

08. Having read the Stevens legal research paper, do you believe a flexible approach to fund governance is preferable to a single legal model, such as a board of trustees for all mutual fund trusts? Why or why not? Do you see any practical difficulties with the legal options presented in that paper? Are there any other options we should consider? Do you agree with the analysis of Québec civil law?

09. David Stevens writes about structural and situational conflicts in a mutual fund context. Do you agree with David Stevens' description of the conflicts? We agree with him that serious conflicts arise when the boards of directors of a fund manager or its shareholder(s) propose to act as the governance agency for a mutual fund and we propose to prohibit this. Do you agree with this conclusion? Please explain your answer.

10. Do you agree with our proposals and our analysis of owner-operated mutual funds? If not, please explain.

1.2 The governance principles

1. Each manager will establish a governance agency

Each mutual fund family will establish at least one governance agency to oversee the mutual fund manager's management of its funds. A mutual fund manager may decide to establish more than one governance agency to oversee its management of its mutual funds. That is, it may create a governance agency for each of its mutual funds or groups of related mutual funds as it sees fit.

Issues for comment

11. We do not currently propose to specify the maximum number of mutual funds that may be overseen by a governance agency. Is there a practical limit to the number of mutual funds that one governance agency can oversee effectively? Are mutual funds managed in ways that are sufficiently common to all mutual funds so that one governance agency can oversee all mutual funds in a related family? Should we provide guidance to the industry on the scope of oversight for a governance agency?

2. The governance agency will be of a sufficient size

The governance agency for a mutual fund family will have no fewer than three individual members. When the fund manager is setting up the first governance agency, the fund manager should consider the size of the governance agency to ensure that it has enough members to discharge its responsibilities. Thereafter, the governance agency will consider its size, based on its experience with performing its duties. If additional members are needed, the governance committee should appoint them.

3. Governance agency members will be independent

A majority of the governance agency members will be independent of the mutual fund manager. An independent member will act as the governance agency chair.

Two issues regarding the independence of members:

A definition of independence

Stephen Erlichman recommends that we base our definition of independence on the Dey Report's definition of "unrelated directors". We agree with this recommendation. Thus, a member of a governance agency of a mutual fund will be independent of the fund manager if he or she is free from any interest and any business or other relationship which could, or could reasonably be perceived to, materially influence the member's oversight of the mutual fund manager's management of the mutual fund. Governance agency members will be required to be independent of the fund manager, its management, and its major shareholders and any party that is in a position to exert influence upon management of the fund manager.

A majority versus all members being independent

Since the primary purpose of the governance agency is to ensure that conflicts of interest in the management of mutual funds are minimized, some people have suggested to us that all members of the governance agency should be independent. Why should some members be related to the fund manager? In a corporate context, we accept the need for some directors to have a connection to the management of the corporation. In a mutual fund context, what role do the non-independent members of the governance agency play? Notwithstanding the arguments in favour of requiring all members of a mutual fund governance agency to be independent, we believe that equally valid reasons exist for fund manager representatives to be members of a governance agency. These representatives will be expected to bring the perspective of the fund manager to the governance agency, including their insights into the business of the fund manager.

Issues for comment

12. Do you think fund families will find it difficult to recruit qualified members for a governance agency at a reasonable cost? Do you have any experience with trying to recruit members of a governance agency?

13. Does the definition of independent members make sense to you? Will it be easy to apply to potential governance agency members? If not, can you suggest an alternate definition or the clarifications you think are necessary? What do you think about whether or not we should require a majority or all members to be independent?

4. The role of the governance agency will be to oversee

The role of a governance agency will be to oversee actions of the mutual fund manager in managing its mutual funds to see that it acts in the best interests of investors. The governance agency's role will be to *supervise*—it will not micro-manage the day-to-day management of the mutual funds. In certain circumstances, particularly when dealing with situations where conflicts of interest exist, the governance agency will make decisions.

5. The governance agency will carry out specific responsibilities

To fulfil its role, a governance agency will develop a mandate that is consistent with our governance principles and identify how it wishes to carry out that mandate. We expect each governance agency to define responsibilities that are appropriate to it and the mutual funds it oversees. Each governance agency will tell investors about its mandate. We encourage the industry to develop best practices on the responsibilities of governance agencies.

In the absence of industry best practices, we expect a governance agency to carry out the specific responsibilities we set out below, in addition to any other function the governance agency believes is important. The specific responsibilities we outline are minimum standards only; governance agencies will consider whether other more extensive duties are relevant. We expect fund managers to facilitate the execution of these duties, for example, by supplying information the governance agency requests or requires.

A governance agency will:

a. ask senior officers of the mutual fund manager to meet regularly with it and provide it with whatever information about the specific mutual funds that the governance agency feels is necessary to carry out its role.

b. identify the policies and procedures of the fund manager that are material to investors. If the fund manager does not have any specific written policies and procedures, the governance agency will ask that these policies and procedures be developed. At a minimum the governance agency will require that the fund manager develop policies and procedures addressing the following. The governance agency then will approve and monitor the fund manager's compliance with these policies and procedures.

    i. internal controls
    ii. controls to monitor external service providers and delegated functions
    iii. compliance with applicable securities legislation and sound business practice
    iv. expense and cost allocations between the fund manager and its mutual funds and amongst the mutual funds themselves
    v. valuation of portfolio assets
    vi. brokerage allocation and soft dollar transactions
    vii. proxy voting.

c. consider what action to take where there has been material non-compliance by the fund manager with its policies and procedures or our regulation. Governance agencies will consider whether the non-compliance has serious implications for investors and whether it should inform the regulators about the non-compliance.

d. consider and approve the fund manager's choice of benchmarks against which fund performance will be measured and monitor fund performance against these benchmarks.

e. monitor that the mutual funds are managed according to their stated investment objectives and strategies.

f. establish a charter setting out its responsibilities and its operating procedures, including:

   i. the role of any committees and sub-committees
   ii. quorum requirements
   iii. compensation of members
   iv. term of membership
   v. succession planning
   vi. orientation program for new members
   vii. dispute resolution
   viii. annual assessments of its performance.

g. act as the audit committee for the mutual funds and in that capacity:

   i. review and approve the financial statements of the funds
   ii. communicate directly with internal and external auditors of the funds
   iii. approve any proposal to remove the auditors and/or to appoint new auditors.

h. approve the policies of the fund manager about transactions with related parties that involve the mutual funds and determine which transactions can only be carried out with the prior approval of the governance agency.

Issues for comment

14. Are the responsibilities we describe appropriate for a governance agency? If not, please explain why. Have we neglected to mention any responsibilities that should be ascribed to the governance agency? For example, should the governance agency review or approve mutual fund disclosure documents?

15. Can you think of any other policies and procedures the governance agency should review and approve? For example, should the governance agency review policies on the use of derivatives?

16. Do you believe the independent members of the governance agency will be effective in their audit committee role?

6. Members of the governance agency will be subject to a standard of care

Governance agency members will need unambiguous duties and a standard of care so they may understand how to exercise their duties and meet that standard. Although applicable private law may impose a duty and standard of care, we will articulate a clear regulatory statement: governance agency members will be required to exercise the powers and discharge the duties of their office honestly, in good faith and in the best interests of investors. In so doing, they will be required to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

Both trustees of mutual funds and mutual fund managers will continue to be subject to applicable standards of care under private law (civil law in Québec and common law in the other provinces) and as

set out in securities legislation in some provinces. Members of a governance agency will not necessarily be vicariously liable for the negligence or wrongdoing of a fund manager. They will only be liable for losses of investors if those losses result from their failure to discharge their duties in accordance with the standard of care. We will allow governance agency members who discharge their duties in accordance with the standard of care, and who nonetheless incur personal losses as a result of a lawsuit, to seek indemnification from the relevant mutual funds. Section 4.4 of National Instrument 81-102 provides such an avenue of recourse for fund managers in similar circumstances.

Standards of care for governance agency members under private law and corporate law

The Stevens legal research paper suggests that governance agency members will likely owe a fiduciary duty to investors to act honestly and in good faith with a view to the best interests of investors. When governance agency members are performing their duties, they must exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Civil law does not have a concept of "fiduciary duty" as such, but it does have a set of rules and principles that are generally analogous to the common law doctrines governing fiduciary duties. These would, in general, likely apply to the governance agency members. In particular, members of the governance agency would be classified as administrators of the property of another. As such they would be obliged, like fiduciaries at common law, to act with prudence and diligence, honestly and faithfully in the best interests of their beneficiaries.

Directors of mutual fund corporations will be subject to the standard of care for directors under corporate law.

Issues for comment

17. The Fund Governance Committee of The Investment Funds Institute of Canada (IFIC) recommends that we limit the liability of a governance agency member for breaches of the standard of care to $1 million. In part because members of boards of directors of corporate mutual funds will not have this limitation on their liability we do not propose to regulate any limits on liability. Also, we are not convinced such a limitation is in the public interest. What are your views?

18. Will a regulatory statement on the standard of care for governance agency members allow potential members to assess their personal exposure in so acting? Will potential qualified members be deterred from sitting on governance agencies?

19. If you have experience with a governance agency for your mutual funds, how have you analysed their liability under common law or otherwise? Have you obtained insurance coverage for the members of your governance agency?

7. Appointment of the governance agency members

The first members of the governance agency may be appointed by the mutual fund manager or elected by investors, at the option of the fund manager. Thereafter, individuals chosen by the governance agency members will fill any vacancies on the governance agency. The fund manager and the governance agency members responsible for appointments will consider the qualifications of prospective members to so act, including their status as independent members if applicable. Governance agency members should understand the nature of the time commitment required to act as a member of a governance agency and be prepared to devote sufficient time.

If a governance agency member resigns, he or she will tell the fund manager and the other members of the governance agency the reasons for the resignation.

Fund managers will send investors notices telling them about all new appointments and resignations. These notices will be sent within a reasonable time after the appointment or resignation and must be filed publicly with us on our electronic filing database, SEDAR. These notices can be combined with and delivered at the same time as other investor communications. Notices will tell investors about the qualifications and experience of new members and will explain whether or not these members are independent of the fund manager. If a member is not an independent member, the fund manager will explain why the member is not independent. If a governance agency member resigns, the notice will say why the member resigned.

The names, experience and relationships of the governance agency members will be outlined in each mutual fund's point of sale disclosure documents.

Investors need to be connected to their governance agency

In essence, our proposals for improved governance of mutual funds are investor protection initiatives. A perfect governance system would allow the investors to nominate and elect the members of the governance agency. However, annual meetings, or even one-time meetings to appoint the first members, for the over 2,500 mutual funds in Canada are simply not feasible. In addition to the logistical and cost considerations of meetings, we question how a governance agency that oversees all mutual funds in a fund family (in some cases, over 100 mutual funds are in a fund family) can ever be elected by the investors in each of those mutual funds.

Two issues are raised by the initial appointment of governance agency members by fund managers:

- will it create an insurmountable bias in favour of the fund manager and
- how real will the governance agency's accountability to investors be, if investors have no part in their appointment?

We must be satisfied with the resolution of these issues.

Issues for comment

20. Are there alternatives to the appointment-election conundrum we outline? Is there another practical way for members to be appointed to fund governance agencies?

21. What do you think about the issues associated with fund managers appointing governance agency members? Are these real or theoretical? If you act on a governance agency and were appointed by the fund manager, please share your experience with us.

22. Should investors who do not like the elected/appointed governance agency members be allowed to exit without penalty? Do we need to give any guidelines for qualifications of prospective members of a governance agency?

1.

8. Compensation of the governance agency members

The governance agency will set their own compensation, which can be paid out of fund assets. However the fund manager will have the ability to call an investor meeting to ask that investors consider any compensation that the manager believes is unreasonable. The compensation paid to governance agency members will be disclosed in each mutual fund's point of sale disclosure documents. Investors will be given advance notice of any proposed increases in the amount of compensation to be paid—including advance notice of the compensation the first governance agency members propose.

As part of its overall cost allocation policy, the fund manager will establish procedures for fairly allocating the governance agency costs amongst the applicable mutual funds. This procedure will be approved and monitored by the governance agency.

Issues for comment

23. Some people are concerned about the lack of checks and balances on the governance agency setting its own compensation. We do not currently propose to place any limits on the amount or kind of compensation that may be paid to governance agency members. Should we set limits to give guidance to the industry? Should the mutual fund manager be involved in the process of setting the governance agency's compensation or not? Would the independence of governance agency members be compromised if the mutual fund manager set and paid their compensation directly? What do you think about our proposal that the fund manager be given veto power via the ability to call a special meeting to have investors consider any compensation that the fund manager believes is unreasonable?

9. Dispute resolution

If a governance agency's disagreement with the mutual fund manager cannot be resolved using the dispute resolution procedures set out in the governance agency's charter, the governance agency will have the option to put the issue before investors at special meetings called for that purpose. If the governance agency chooses not to put the issue to an investor meeting, it must tell investors about any unresolved dispute and how it proposes to deal with it. This investor communication would be mailed to investors and filed publicly with us on our electronic filing database, SEDAR.

If the fund manager, working diligently, cannot resolve a dispute with the governance agency within a reasonable period of time, the fund manager would file an amendment to the mutual funds' prospectus documents and issue a press release describing the dispute.

The governance agency will not have the power to terminate the fund manager's appointment as manager, without authorization from the investors. However, investors of a mutual fund would have this option at a special meeting called by the governance agency for the purpose of considering whether or not to terminate the fund manager.

A fund manager may decide that the governance agency or individual members are not performing duties or carrying out responsibilities in accordance with the standard of care. Fund managers will have the option of calling investor meetings to have them terminate the appointment of governance agency members and elect new members. Governance agency members can also decide to terminate the appointment of non-performing colleagues on the governance agency by means of an investor meeting.

Two controversial issues:

The power to terminate the manager

A board of directors of a corporation has the power to remove and replace the chief executive officer of the corporation. People analogize fund governance to corporate governance and say that the governance agency will only have real powers or "teeth" if it can dismiss the fund manager. We think that this unilateral power in the hands of governance agencies is not practical for mutual funds. Investors invest in a specific mutual fund when they are comfortable with the fund manager. Dismissing the fund manager would not only subvert investor wishes, but would leave mutual funds virtually orphaned. Who would take over the management of the mutual fund? We believe governance agencies need to be able to initiate investor meetings—particularly where the governance agency has a significant problem with the fund manager—and be able to suggest a change in manager to investors. Giving investors the ultimate power to change the fund manager or decide a dispute is a more realistic approach.

What to do about "loose cannons" on the governance agency?

If fund governance agency members are to be appointed, but not otherwise re-nominated and re-elected by investors on an annual basis, we must consider the possibility of a governance agency or individual members of a governance agency not performing. A governance agency should assess its own performance and the contribution of individual members on an annual basis. A fund manager can equally develop performance standards, in consultation with the governance agency. When a fund manager has reasonable grounds for asserting that the governance agency or an individual member is not carrying out responsibilities properly, in the event the matter cannot be resolved, the fund manager will have the option of asking investors to replace the member(s) of the governance agency. Investors in every fund overseen by the governance agency should be asked to make that decision.

Issues for comment

24. Will the governance agency have sufficient powers in the event of a dispute with a fund manager? Will it be able to discharge its functions properly? If not, can you suggest alternatives for effective dispute resolution? If you do not agree with our discussion on the powers to terminate the fund manager, please explain why you disagree.

25. What do you think about our suggested approach for dealing with non-performing fund governance agencies or individual members? Do investors or fund managers need any additional powers or information?

10. Reporting to investors

Investors will receive:

i. point of sale disclosure of:
   (a) the name and background of each governance agency member
   (b) the compensation paid to governance agency members
   (c) the responsibilities of the governance agency.

ii. annual reports from the governance agency including information on:
   (a) the activities of the governance agency
   (b) any changes in its membership and compensation
   (c) its assessments of its performance
   (d) any unresolved disputes between the governance agency and the mutual fund manager.

We will expect fund governance agencies to consider industry standards when providing other information to investors. We will encourage fund governance agencies to ensure that their standards of disclosure are at least equal to the standards followed by corporations. The annual reports of the governance agency may be combined with other investor communications, such as the annual reports of the mutual funds in a fund family.

Issues for comment

26. What information do you think investors should receive about the governance agency in addition to, or in substitution for, the information we outline?

1.3 How will the CSA implement governance agency requirements?

1. We propose to change our regulation to require fund families to create fund governance agencies. We will use available and appropriate regulatory tools to achieve this result—rule- or regulation-making or recommending changes to provincial legislation. Some of our proposals can be implemented through policy statements that interpret our rules or legislation.

2. We expect to build-in ample transition periods for the implementation of any fund governance requirements. That is, we will not expect fund governance agencies to be created overnight once our regulatory changes take effect. Our regulation will allow governance agencies to develop over time.

3. We will encourage industry participants to develop education programs for new members of fund governance agencies. We expect the learning curve for new members, particularly in the early phase of implementation of our proposals, will be steep.

Issues for comment

27. How much time do you think we should allow mutual fund managers to develop their governance agencies?

28. What kind of training programs do you think will be necessary for fund governance agency members?

II. Registration of mutual fund managers

This part of the concept proposal deals with what is really the first pillar of our proposed regulatory framework: new minimum standards for mutual fund managers established through a registration regime tailored to the business of managing mutual funds.

2.1 The mechanics of registration

How does this pillar of our proposed framework fit with fund governance?

The first two pillars of our proposed regulatory framework are connected but separate. Registration will establish the conditions that must be met before a registrant will be permitted to manage mutual funds, while fund governance will ensure that that fund manager manages mutual funds in ways that are in the best interests of investors.

Manager registration will achieve two main objectives. It will:

- give regulators oversight over companies acting as mutual fund managers; and
- ensure consistent national minimum standards for mutual fund managers in Canada—mutual fund investors will have the same protections regardless of where their fund managers are located.

Registration will enable us to regulate who comes into the industry and to screen out insolvent companies, those that do not have the required level of capital, and those that do not have adequate compliance measures. It represents a proactive approach to the regulation of mutual funds and their managers.

Can fund governance be a reasonable substitute for manager registration?

A mutual fund governance regime will address the way mutual fund managers manage their funds; it will not concern itself with how a fund manager is organized, its staffing or its level of capital. Governance agencies will not be expected to pass judgement on these issues, except to the extent that they will be approving and monitoring important policies of fund managers. We expect fund governance agencies to focus on what is material to investors about the operation and management of their funds. It is unrealistic to expect governance agencies to both carry out their fund governance duties and focus on the internal operations of fund managers.

2.2 The conditions of registration

To be registered as a mutual fund manager, the manager must meet conditions of registration established by us. Conditions of registration will include the following requirements.

1. Senior management positions

a. Each mutual fund manager will fill the following senior management positions:

i. chief executive officer
ii. chief financial officer
iii. senior administrative officer and
iv. senior compliance officer.

b. The mutual fund manager's board of directors will consist of at least three persons. We will not require any independence for the members of this board.

2. Criminal record checks for senior officers

Police and disciplinary checks will be conducted on senior officers and directors of the fund manager by the principal regulator. We will clearly articulate which criminal records are bars to registration.

3. Minimum proficiency

a. Each of the senior officers and directors of the fund manager will have at least three years of direct experience working in, or providing service to, the investment fund/securities industry. The chief financial officer will have suitable financial and accounting training, as well as the expertise to enable such officer to fulfil the functions of such office.

b. Senior officers will successfully complete:

i. the Partners', Directors' and Senior Officers' Qualifying Examination (Canadian Securities Institute) or
ii. the Officers', Partners' and Directors' Course (IFIC) or
iii. an acceptable equivalent to the above.

Why do we need a minimum proficiency requirement?

We agree with the Investment Funds Steering Group's conclusion that "management must be sufficiently knowledgeable and experienced so as to make sound day-to-day operating and investment decisions which are in the best interests of the investors" (*The Stromberg Report: An Industry Perspective*, November 1996, at 30)

Issues for comment

30. The Fund Governance Committee of IFIC recommends that the fund governance agency be responsible for considering the qualifications and proficiency of management. If the governance agency does not believe the fund manager has the right people to undertake the task of managing the funds, it should require changes. If the fund governance agency has this power, the Committee submits that we do not need to impose regulatory standards.

    We do not agree with the assertion that the fund governance agency should take on this role. Our registration system for advisers and dealers sets out standards for their officers and directors and we think similar requirements should apply to fund managers. We think the governance agency should be responsible for overseeing the management of mutual funds, not for assessing the adequacy of senior management and the directors of the fund manager. Do you have any thoughts on this matter?

4. Filing of the fund manager's financial statements with the regulator

Mutual fund managers will file their annual audited financial statements with the principal regulator.

5. Minimum capital

Mutual fund managers will meet minimum capital requirements. Capital requirements will be phased in over a three-year period after implementation of this requirement.

The capital issue:

Why do fund managers need to meet minimum capital levels?

Commentators give the following reasons that fund managers should have minimum levels of capital:

a. Capital will require mutual fund managers to maintain adequate financial resources to meet their business commitments, including providing quality staff, equipment, systems and services to support the assets of fund investors
b. Capital will ensure that mutual fund managers have the ability to satisfy any major legal claims, such as accountability for prospectus disclosure, which may be made.
c. Capital will offer some protection against the risk that the mutual fund manager will collapse and not meet its liabilities.

How should we calculate minimum capital requirements?

We have not yet selected a means of calculating minimum capital amounts. The following recommendations have been made to us:

Stromberg Report Recommendation

Capital should be set at $1,000,000 and should increase as fund assets increase according to the following scale:

- Less than - $100 million - $1,000,000
- $100 million - $200 million -1.00% up to $2,000,000
- $200 million - $1 billion - 0.25% up to $4,000,000
- $1 billion - $5 billion - 0.10% up to $8,000,000
- $5 billion and over - 0.05% over $8,000,000

Steering Group Report Recommendation

A formula for minimum capital requirements should consist of the following tests:

a. A level of working capital calculated in accordance with generally accepted accounting principles; and
b. A level of net worth calculated under generally accepted accounting principles, based on net assets under management. This would consist of a set minimum amount (for example $1 million), plus an additional amount that varies depending on the net assets under management:
    - for net assets under management of $100 million to $500 million - an additional 50 basis points of such net assets
    - for that portion of net assets in excess of $500 million to $2 billion - an additional 35 basis points of such net assets;
    - for that portion of net assets in excess of $2 billion to $5 billion - an additional 25 basis points of such net assets;
    - for that portion of net assets in excess of $5 billion - an additional 10 basis points of such net assets

Stephen Erlichman's recommendation

Review other recommendations, including the Australian Law Reform Commission's recommendation that capital should be set at 5 percent of the value of the assets of all mutual funds managed by the manager, subject to a minimum of $100,000 and a maximum of $5,000,000.

Issues for comment

31. Do you believe a minimum capital requirement is justified? What do you think about the three options that have been recommended to us? Can you suggest an alternative option?

6. Minimum insurance

a. Minimum bonding and insurance requirements will be established for mutual fund managers.

b. The insurable risks will include:

i. errors and omissions
ii. fidelity coverage
iii. directors' and officers' liability
iv. property and casualty
v. business interruption
vi. "on premises"
vii. "in transit"
viii. forgery or alterations
ix. securities.

c. The board of directors of a mutual fund manager will certify that full consideration has been given to the amount of bonding or insurance necessary to cover the insurable risks in the manager's business.

Issues for comment

32. Is our list of insurable risks complete? We will need to determine the appropriate minimum levels of coverage for the insurable risks. Can you offer us any guidance on this matter?

7. Implementation of internal controls, systems and procedures

a. Each mutual fund manager will establish appropriate internal control procedures and a system for reporting on them. Internal control procedures for the following functions will be articulated by fund managers:

i. transfer agency
ii. fund accounting
iii. trust accounting
iv. detecting and reporting any money laundering activities
v. disaster recovery, contingency planning and business continuity

b. External auditors will perform periodic reviews of the adequacy of the mutual fund manager's internal control procedures. This report will be filed with the principal regulator.

c. Managers will be required to report annually on their compliance with internal controls. This report will be filed with the principal regulator.

d. We will encourage industry participants to develop best practices on the appropriate internal control procedures for fund managers.

Issues for comment

33. Is our list of essential internal controls complete? Do you think our proposal for an auditor review of internal controls is necessary? Why or why not? Do fund managers today routinely ask their auditors to conduct this review?

8. Controls to monitor external service providers and delegated functions

A fund manager will be required to have adequate resources, systems and procedures and personnel in place to monitor the services provided by third parties. For example, if third parties are retained to provide investment advisory services, the fund manager will be required to have staff with sufficient knowledge, expertise and experience in portfolio management who will be responsible for oversight and assessment of the adequacy of the services provided by third party portfolio managers.

Why do mutual fund managers need to monitor their service providers?

Although there are numerous benefits to the delegation of functions by a mutual fund manager to a third-party service provider, this should not reduce the protections available to investors, or be used by the mutual fund manager as a way of avoiding the minimum standards imposed by our regulation.

The practice of outsourcing essential services for mutual funds raises a number of potential issues for the manager because:

- It is not assured of priority service
- It loses control over the adequacy of the systems and controls, the provision of the services, and the timing and accuracy of the processing
- It does not have any control over the substantial cash flow
- It does not have control over the quality of service.

It is part of the manager's responsibility to ensure that a service provider has adequate resources to properly perform advisory and distribution functions. Monitoring of services providers is also prudent in light of the fact that fund managers are legally accountable for the actions of their service providers.

Issues for comment

34. It has been suggested to us that the CICA provisions respecting Section 5900 Reports may be of assistance in discharging regulatory obligations of the fund manager to satisfy itself, and demonstrate on an ongoing basis, that a third party service provider is competent to fulfil the functions in question. Independent external auditors would perform this audit and the report would be filed with the manager and regulators. Do you believe a Section 5900 Report would be useful in this context? Why or why not?

35. Can you think of any other minimum standard that should apply to fund managers as a condition of registration?

III. Product regulation

This part of our concept proposal briefly outlines our plans to re-evaluate the existing regulation of conflicts of interest and the structure of mutual funds to eliminate redundancies created by the addition of improved fund governance and registration of fund managers.

3.1 Regulatory restrictions to be re-evaluated

a. We will consider whether the following regulatory restrictions may be eliminated:

   i. The prohibitions and restrictions on related-party transactions, including prohibitions and restrictions against:

      (a) investing in a security for 60 days if a related dealer underwrote the offering
      (b) dealings between "responsible" persons
      (c) investing in mortgages if the transaction is not at arm's length
      (d) inter-fund trading
      (e) principal trading and fund acquisitions of securities of a related-party.

b. We will consider whether the following regulatory restrictions may be simplified:

   i. The investment restrictions and practices, including:

      (a) concentration restrictions
      (b) restrictions concerning illiquid assets
      (c) restrictions on investments in other mutual funds or specified types of securities

c. We will re-examine each of the Parts currently contained in National Instrument 81-102 Mutual Funds to determine whether the detailed rules can be either eliminated or replaced with more general principles or guidelines. Other applicable legislation may also be re-examined.

d. We will require each mutual fund manager to develop policies articulating how the general principles and guidelines, referred to above, are to be applied. The governance agency or agencies for each mutual fund family will be responsible for ensuring the manager complies with its policies.

Issues for comment

36. Please provide us with your views on how we can best achieve our objectives of re-evaluating product regulation. What changes are most important to you and why are they important? What aspects of product regulation do you think cannot be changed?

37. Is it realistic to expect that the governance agency will ensure the manager complies with its policies on such matters as related-party transactions? Can this approach replace the current conflicts of interest rules?

IV. Investor rights

The fourth pillar of our proposed regulatory framework for regulating mutual funds and their managers rests on the importance of disclosure and investor rights. We explained earlier in this concept proposal that we do not propose to change our disclosure regime in this concept proposal.[13] This part of our concept proposal describes what investor rights we propose to change as part of our renewed framework.

What rights should investors have?

Our regulation of mutual funds gives investors the right to know about, and in certain cases, vote on changes a fund manager may wish to make to its mutual funds. We continue to think that advance notice and, in certain cases, the ability to vote are important investor rights. However, many commentators have suggested that we could rely on a fund governance agency for decision making on behalf of investors in certain circumstances. If we improve mutual fund governance in the ways we are thinking about, we agree that this change may be an option, particularly for changes in auditors of mutual funds. Segregated fund regulation does not require investor meetings to be called for changes in auditor, while current mutual fund regulation does. Fund managers have told us they want this flexibility.

Consolidation in the mutual fund industry has given rise to a number of fund manager changes. While changes in manager require fund investor approval, changes in control of manager do not under the current regime. We need to consider this inconsistency as a follow-on to our proposal to register fund managers.

Segregated fund insurance regulation provides for minority rights while mutual fund regulation does not (although segregated fund holders do not have voting rights in the event of fundamental changes). We want to re-examine this issue as we move forward with our project to harmonize the regulation of mutual funds and segregated funds as members of the Joint Forum of Financial Market Regulators.

[13] Provincial regulators are presently considering changes designed to modernize the continuous disclosure regime for mutual funds.

4.1 Investor rights

a. We will re-examine whether investor meetings need to be called when fundamental changes, including changes in manager resulting from indirect changes in control, to mutual funds are proposed. For example, changes in auditors of a mutual fund need to be approved by investors. We are considering whether governance agencies could be asked to make decisions on fundamental changes as a substitute for, or in addition to any necessary investor approvals. Fund governance agency members may be as qualified as fund investors to make these decisions. Having governance agencies approve fundamental changes rather than investors at special meetings will serve to reduce costs to mutual funds and fund managers and indirectly to investors.

b. Through our work with our insurance colleagues on the Joint Forum of Financial Market Regulators, we know insurance regulators have considered what rights to give investors in segregated funds where fundamental changes to their investment are proposed. We will monitor the implementation of their changes and consider whether minority rights should be provided to mutual fund investors who do not agree with a particular fundamental change to their mutual fund. Although we canvassed this issue while finalizing National Instrument 81-102, we believe this area merits reconsideration once we examine the final provisions of corresponding insurance regulation.

c. We also will review investor rights as we develop specific rules for governance agencies. We may need to define additional investor rights in order to achieve our objectives for fund governance.

Issues for comment

38. What are your views on the specific areas that we are re-considering? Are there other changes we should consider in the area of investor rights in light of our proposed renewed framework? Do we need to consider defining additional rights for investors?

C. The benefits of our renewed framework versus its costs

Our proposed renewed framework for regulating mutual funds represents a significant shift in our approach to mutual funds. We know that all regulatory actions have their costs, however it is important to us that the benefits of our proposed changes outweigh the potential costs. We owe a commitment to the industry and consumers to proceed with regulatory reform only where the benefits clearly outstrip the costs.

While developing this concept proposal, we were careful to consider the potential business and regulatory costs of our proposals. In order to gain a better understanding of the costs associated with our proposals, we surveyed fund managers about the costs of their various governance agencies. The OSC's chief economist also conducted independent research.

The OSC's chief economist has estimated, on a preliminary basis, the costs of creating and operating a governance agency of the nature we propose. He estimates that, at most, these costs will represent no more than 0.016 percent of total industry assets under management. Our preliminary view is that our proposals for improved fund governance should not place an undue burden on mutual fund managers or mutual funds.

We believe the costs of our proposals will be more than offset by the benefits. These will include important qualitative benefits that are hard, if not impossible, to assign a dollar figure to—such as those we describe in Part A of this concept proposal. The staff research paper contains a detailed analysis of the potential costs of our proposals as well as a proposed framework for quantifying certain of their direct benefits.

We have an obligation to analyse the costs versus the benefits
For example, section 2.1 of the *Securities Act* (Ontario):

"Business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought to be realized".

1.

Issues for comment

39. Upon reading the staff research paper, what are your views on the costs of our proposals versus the benefits? Should we take into account other costs? Other benefits?

D. What happens next?

1. We will accept comments on our proposals until June 7, 2002

As we explained earlier, we will accept your comments until June 7. If you have any questions about our proposals, you may contact the following staff members for clarification:

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2. We will review the comments on this concept proposal

We will carefully read your comments as we receive them. Once we have analysed your comments and completed any additional consultation we think is necessary, we will proceed to draft changes to our regulation.

3. We will publish for comment the specific changes to our regulation

We expect to release for comment draft rules or regulations and policy statements setting out our proposals for improved fund governance and registration of fund managers. We will also provide more detail on our proposals to change product regulation and investor rights.

The Canadian Mutual Fund Industry: Its Experience With and Attitudes Toward Mutual Fund Regulation

A Background Research Report to Concept Proposal 81-402 of the Canadian Securities Administrators

Prepared by
Staff of the Ontario Securities Commission

March 1, 2002

What is this background report about?

Before introducing any regulatory reforms that will change the way an industry does business, the Canadian Securities Administrators (the CSA) need to fully understand both that business and the views of industry participants on the reforms proposed. The CSA have remained aware of this need as they have worked toward the release of a concept proposal describing a renewed framework for regulating mutual funds and their managers. As David Brown explained in the forward to Stephen Erlichman's report: [1]

> Exploring the full range of perspectives and canvassing options for improving fund governance and the management of mutual funds is a Commission priority for the upcoming year…. You can expect to hear from us as we move forward.

Indeed, the Canadian mutual fund industry, its advisers, and other interested parties did hear from us. As the principal regulator of the majority of Canadian mutual funds and their managers, we, the staff of the Ontario Securities Commission (the OSC), undertook to consult widely with industry participants and gather empirical data about the mutual fund industry in Canada. Our findings, which are summarized in this report, lay the groundwork for the CSA's thinking on how best to improve mutual fund governance and the regulation of mutual fund managers.

The first part of the report describes the research we conducted: it explains the methods used and identifies the types of information captured. The next part provides a snapshot of the mutual fund industry in Canada. This snapshot conveys information about the size and shape of the industry and the players within it. The third part outlines what we have learned about the mutual fund industry's experience with, and its attitudes toward, mutual fund regulation and particularly our proposed governance principles. Finally, the report ends with a proposed framework for a cost-benefit analysis of our proposals based on what we have gathered about current industry practices and costs.

This background report is published together with the CSA concept proposal entitled, *Striking a* New *Balance: A Framework for Regulating Mutual Funds and their Managers* (the concept proposal). It should be read in conjunction with that paper.

[1] *Making it Mutual: Aligning the Interests of Investors and Managers: Recommendations for a Mutual Fund Governance Regime for Canada,* Prepared for the Canadian Securities Administrators by Stephen I. Erlichman (Toronto: June 2000) [hereinafter the Erlichman Report]. "Towards Improved Fund Governance: The Way Forward", Forward to the Erlichman Report (July 27, 2000).

Description of the research

Review of AIF fund governance disclosure

We began our research by looking at what mutual funds have to say about their governance practices. Our review of publicly available prospectus disclosure offered us a broad overview of the current governance practices in Canada and the information gathered became the point of departure for the other pieces of research we conducted.

Methodology

Before February 1, 2000, information about a mutual fund's governance structures was not generally available to the public. Once National Instrument 81-101 Mutual Fund Prospectus Disclosure and its forms came into force, however, this information became widely available as prospectus disclosure.[2] Item 12 of the AIF Form requires mutual funds to provide the following fund governance disclosure:

> Item 12: Fund Governance
>
> Provide detailed information concerning the governance of the mutual fund, including information concerning
>
> (a) the body or group that has responsibility for fund governance, the extent to which its members are independent of the manager of the mutual fund and the names and municipalities of residence of each member of that body or group; and
>
> (b) descriptions of the policies, practices or guidelines of the mutual fund or the manager relating to business practices, sales practices, risk management controls and internal conflicts of interest, and if the mutual fund or the manager have no such policies, practices or guidelines, a statement to that effect.

We culled this mandated disclosure from the prospectus filings that came through our office. This information was then put into a database and sorted.

Information captured

The database contains fund governance information for over 70 mutual fund managers—a number that corresponds closely to The Investment Funds Institute of Canada's (IFIC) statistics on its mutual fund manager members.[3] Although we are satisfied our information is fairly complete, we note that the data may be both over- and under- inclusive in places. The data may be over-inclusive because there has been much consolidation in the mutual fund industry in recent times; our database includes information for managers that have taken part in mergers or that are now no longer managing mutual funds. At the same time, our data may be under-inclusive because our review only captured those managers currently offering conventional mutual funds to the public in Ontario; those mutual funds falling outside the ambit of NI 81-

[2] National Instrument 81-101 Mutual Fund Prospectus Disclosure (1999) 22 OSCB (Supp.2) [referred to as NI 81-101]. Form 81-101F1 and Form 81-101F2 [referred to as the SP and AIF Form, respectively].

[3] IFIC is the Canadian trade association for investment funds. The IFIC member's directory may be found at www.ific.ca.

101 (particularly labour-sponsored investment funds and commodity pools) and those funds not sold in Ontario are not represented in the database.

Our review yielded important information on the different fund governance structures that have grown-up in the absence of a mandated fund governance regime. This piece of research gives us a sense of which governance models have been embraced by the industry and which have not. It also gives us some insight into what mutual fund managers *think* is important to investors when it comes to the governance of their funds.

In-person interviews with mutual fund managers

Although the in-person interviews with mutual fund managers were, by far, the most time consuming and labour intensive part of our research, these meetings were invaluable to us. The insights we gained through these meetings had a significant impact on our thinking about the industry and helped shape the CSA's proposals.

Methodology

While meetings with all of the mutual fund managers in Canada were not possible, or necessary, we wanted a large enough sample to give us an accurate picture of the industry. Based on our review of each manager's fund governance disclosure, we chose 30 mutual fund managers of all sizes from across the country. Some had no governance structures, while others employ the different fund governance structures currently in use. In addition to completing over 20 meetings in and around the Toronto area, we completed 5 meetings in Montreal, 2 meetings in Winnipeg and 2 meetings in Vancouver. We are satisfied that the managers we spoke to represent a broad cross-section of the industry.

We decided that face-to-face meetings with the senior management of mutual fund managers would be the best way to access the information we desired. We assumed people would be most candid in small, in-person meetings. We also assumed people would be more comfortable having us visit them in familiar quarters than being called before the regulator. As we booked the meetings, we made an effort to get beyond the legal advisers who usually speak to us on behalf of mutual fund managers—seeking, instead, to gain access to the founding business people and the key decision-makers in the industry.

Each mutual fund manager was provided with discussion topics in advance of the meetings. After we provided the attendees with a short presentation on the nature and scope of our project, we explored these topics with them in two-hour long sessions.

Information captured

During the meetings, we obtained detailed information about the internal affairs of each mutual fund manager. In addition to learning about each company's size, ownership and organization, we also learned about each one's approach to sales and distribution, portfolio management, trust arrangements, and fund governance.

We also canvassed each mutual fund manager's attitudes towards fund governance and registration of fund managers and gathered specific feedback on our proposals. During these discussions, we asked each manager to bring their business reality to bear on our proposals and invited them to highlight any issues that might be specific to their business.

In-person interviews with industry representatives, advisers to the industry, and other interested persons

In our effort to explore the full range of perspectives, we also met with the following people:

- The members of IFIC's Fund Governance Committee
- International mutual fund regulators
- Individuals who sit on mutual fund advisory boards or boards of governors
- Legal advisers to the mutual fund industry
- Auditors for the mutual fund industry
- OSC Commissioners
- Academics and critics

Methodology and information captured

We held regular meetings with the members of IFIC's Fund Governance Committee to give them updates on our work and to receive submissions on discrete issues. We often used these meetings to engage in broad discussion and debates.

We had discussions with international mutual fund regulators on specific issues around mutual fund governance. This avenue of inquiry lent a broader context to our thinking about mutual fund governance in this country. We were also able to draw on the experience of regulators with prior experience in this area.

Each of the other interviews we held tended to open with a short presentation on the nature and scope of our project. In some cases we moved on to pose direct questions, while in other cases we turned to a more free-ranging discussion. We gathered a wealth of practical information and explored different theoretical perspectives during these meetings.

Survey of mutual fund managers with governance structures

Having already completed a substantial amount of qualitative research, we felt it was important to gather some quantitative data on the mutual fund industry. Our electronic survey was designed, with the assistance of the chief economist at the OSC, to provide us with detailed information and statistics on current governance practices and costs.

Methodology

Our first step was to identify the recipients of our survey. We were specifically interested in gathering information on each mutual fund manager in Canada with what we refer to as a governance agency—a group of individuals, or sometimes a corporate entity, that is responsible for overseeing the manager's activities vis-à-vis its funds. The mutual fund managers we included in our survey had each established one or more of the following types of governance agency:

- an advisory board
- a board of governors
- a board of individual trustees
- a registered trust company that is active in the governance of its mutual funds
- a board of directors for its corporate mutual funds.

We did not include in our survey those mutual fund managers who assign responsibility for fund governance to their own boards of directors. As we describe below, we did not restrict ourselves to mutual fund managers that have governance agencies with a majority of independent members. We were able to identify 28 mutual fund managers with governance agencies.

Our next step was to create our survey using the EZSurvey software. We designed the electronic survey so the recipients could easily click on the answer that applies to them, provide "yes" and "no" answers, and indicate dollar amounts. Although we did leave some room for any additional comments, we did not expect lengthy explanations or answers.

Information captured

The survey was designed to give us an understanding of each governance agency's structure and costs. In particular, we wished to better understand the potential costs of our proposals and the extent to which our proposals will require mutual fund managers to change their business practices.

We were pleased to obtain a 100 percent response rate. The data we received will inform the cost-benefit analysis to be completed by the chief economist at the OSC.

Survey of academic writing

We reviewed several academic sources to find published studies on the efficacy of mutual fund governance. While the majority of these studies come from the U.S. and were not written for the Canadian context, we refer to these studies in this report where relevant.

Snapshot of the industry

The panoramic view

When we step back to take in the panoramic view of the industry, it becomes obvious that the mutual fund business in Canada has grown to sizeable proportions. Our most up-to-date sources tell us that some 52 million account-holders hold over $427 billion in mutual fund securities.[4] We understand that approximately 75 mutual fund managers currently offer over 2,500 mutual funds.

A close-up on mutual fund managers

Assets under management and number of funds

Mutual fund managers in Canada run the gamut from very large to extremely small. Of the 65 mutual fund managers for which we have up-to-date statistics:

- 13 mutual fund managers have in excess of $10 billion in assets under administration.

[4] These statistics are taken from the IFIC website at www.ific.ca. and are as of January 31, 2002.

- 17 managers have between $1 billion and $10 billion in assets under administration.
- 17 managers have between $100 million and $1 billion in assets under administration.
- 18 managers have less than $100 million in assets under administration.

The largest mutual fund manager in Canada has over $40 billion in assets under administration, while another large mutual fund manager offers a line-up of 150 mutual funds. In contrast, many small mutual fund managers have less than $100 million in assets under administration and manage less than 10 mutual funds. Needless to say, there are vast differences in size between the largest and smallest players in this market.

The differences in size are interesting when understood across provincial lines. Manitoba's two very large fund managers represent almost the entirety of their fund industry, while Quebec has no large fund managers, notwithstanding the fact that it is second only to Ontario in the number of mutual fund managers located there.[5] Quebec's very largest managers are on the smaller side of the mid-range. Alberta and New Brunswick each have one small fund manager based in their province, while British Columbia has several. [6] No fund managers are based in the other provinces.

Nature of ownership

Mutual fund managers in Canada are held in different ways by different owners. The common categories of ownership we noted were:[7]

- Widely held—shares of the management company (or a holding company) are publicly held and traded
- Closely held—shares of the management company are privately held
- Closely held by entrepreneur—ownership is dominated by the founding entrepreneur
- Bank owned
- Owned by life insurance company
- Owned by credit union or caisse populaire
- Owned by professional association
- Owned by U.S. or international parent

The mutual funds offered by professional associations and credit unions are what we refer to as owner-operated mutual funds. These can be distinguished from traditional mutual funds insofar as the owners of the mutual fund manager are the investors in the funds. In the professional association case, the mutual fund manager is owned by a professional association and the directors on the board of the manager include representatives of the association. The funds are sold exclusively to members of the professional association. We have come across approximately 13 such fund families during the course of our research. A number of these groups are based in Quebec. In the credit union situation, the credit union is owned by its members and the mutual funds are primarily sold to members through credit union branches. With both of these ownership models, the conflicts of interests that arise between the shareholders of the manager and fund investors do not exist because they are one and the same.

[5] A labour sponsored investment fund and a commodity pool manager are also based in Manitoba.

[6] A labour sponsored investment fund is also based in New Brunswick.

[7] It should be understood that these categories are not mutually exclusive.

A close-up on mutual funds

Trust arrangements

Stephen Erlichman observes that most mutual funds in Canada are trusts, while only a small percentage of them are corporations.[8] The preference for this legal structure is largely dictated by tax considerations. The research confirms our understanding that the vast majority of managers choose to structure their mutual funds as trusts, rather than corporations.

There are four basic types of trustee for mutual fund trusts: (1) the mutual fund manager who also acts as trustee of the funds; (2) the unrelated registered trust company; (3) the registered trust company that is related to the manager; and (4) the individual.

In the most common scenario, the mutual fund manager is also the trustee of its mutual funds. We note that most, if not all, managers do not discharge their obligations as trustee separately from their obligations as manager of the funds. For example, one manager we spoke to does not distinguish between its roles as trustee and manager, seeing both as fiduciaries. Implicit in this is the assumption that the manager's standard of care under securities legislation to act in the best interests of the mutual fund is not different in kind from the fiduciary obligation owed by the trustee to the unitholders at common law.

The second most prevalent arrangement sees a unrelated registered trust company, such as Royal Trust, Trust General or Fiducie Desjardins, acting as trustee of the funds. In this case, the trust company is generally the custodian of the funds as well. These corporate trustees tend to act primarily as custodian and generally delegate most trustee functions to the fund managers. It should be noted that this kind of trust arrangement is prevalent among the mutual fund managers based in provinces with legislation that does not permit companies, other than registered trust companies, to be trustees.[9]

The next most prevalent arrangement sees a related registered trust company acting as trustee of the funds. In most cases, this kind of arrangement involves a bank- or credit union-owned mutual fund manager coupled with a trust company owned by the financial complex. Again, these corporate trustees tend to also act as custodian of the funds. However, some of these trustees differ from the trustees in the above category insofar as they are more active in discharging their duties as trustee. According to two of the mutual fund managers we spoke with, the trustees of their funds are very much responsible for the governance of their funds.[10] Other managers, in contrast, report that the trustees of their funds delegate most of their trustee functions to the managers.

The least common type of trustee used by the mutual fund managers we spoke with was the individual trustee. Only a handful of the mutual fund managers in Canada have a group of individuals acting as the trustees for their funds. The individual trustees for one group of funds we saw are taken from the senior

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[8] *Supra* note 1 at 19.

[9] Presently only Manitoba. This was also the case in Quebec and British Columbia until recently when legislative amendments were passed in each province to permit mutual fund managers to act as the trustee for the funds they manage.

[10] We considered these active corporate trustees to be governance agencies for the purposes of our survey.

management team of the parent life insurance company. There are no independent members in this group. We were told that these individual trustees are active in the governance of the funds.[11]

It is interesting to note that at least two of the managers we met with started with a group of individual trustees but then switched to the manager-as-trustee model. One mutual fund manager turned its group of individual trustees into a board of governors when it took over the job of trustee itself. This change was prompted in part by the desire to limit the liability of the individuals acting as trustees to the kind of liability that attaches to a corporate director. It was also prompted by the fear that the plenary powers to hire and fire the manager, included in the declaration of trust, could lead to the individual trustees taking the business away from the manager. The trustees of another manager's funds were replaced because the individuals had "too much liability" and looked at the funds in "too much detail," in the opinion of the manager.

Arrangements for corporate mutual funds

Some of the larger mutual fund managers offer shares of mutual fund corporations, alongside the units of their mutual fund trusts, to round out their product line-up. Some of these corporate mutual funds have multiple classes of shares and are used to offer a tax advantage to non-registered investors.

Corporate mutual funds must abide by the requirements imposed by corporate statutes. However, it is incorrect to assume that all mutual fund corporations are created alike. During our research we noted that a number of mutual fund managers hold all the common voting shares of their corporate (generally multiple class) mutual funds. As a result, these managers do not conduct annual shareholder meetings for their corporate funds nor do the shareholders of those funds elect the directors—the mutual fund manager does as holder of the common shares. We are told this structure is designed to make the operation of corporate funds as much like mutual fund trusts as possible.

Mutual fund governance arrangements

While it is evident that the responsibility for the governance of mutual fund corporations lies with their boards of directors, the locus of responsibility is less obvious in the context of mutual fund trusts. The 70 mutual fund managers in our database disclose that they settle responsibility for the governance of their funds with the following entities:

- the mutual fund manager (25)
- the named president of the mutual fund manager (4)
- the trustee (19)
- both the fund manager and the trustee (19)
- a board of governors (2)
- an investment committee (1)

There appears to be some confusion in the industry as to the basic allocation of responsibility for fund governance.

More than a third of the mutual fund industry in Canada already has governance agencies in place to oversee mutual fund trusts, in the absence of a mandated fund governance regime. The governance agency models currently in-use are:

[11] We considered these boards of individual trustees to be governance agencies for the purposes of our survey.

- The advisory board model. Members of this board are appointees of the trustee or manager. This board may be called an advisory committee/council or a board of governors. They may or may not be independent of the fund manager and trustee. The roles of these boards vary widely. This is the most commonly used model.

- The individual trustee model. Mutual funds in Canada have between one and six trustees who may or may not be independent of the manager. Only a handful of mutual fund managers use this model.

- The active corporate trustee model. While a number of mutual fund managers in Canada have a registered trust company as the trustee of their mutual funds, only two have trustees that are sufficiently active in the governance of their funds to be considered governance agencies.

The remaining 60 percent of the industry have no formal fund governance structures in place or they rely on what commentators refer to as the public company model. With this model, a committee of the board of directors of the manager is charged with monitoring the relationship between the manager and the funds. Our governance agency concept excludes the public company model due to the divided loyalties and structural conflicts inherent in this model.

Portfolio management

The approaches taken to portfolio management vary widely within the industry. A large number of the mutual fund managers do all or most of their portfolio management in-house. Some of these managers started out as investment management firms and maintain a wealth-management focus. The majority of mutual fund managers we spoke to have the capacity to do their own in-house portfolio management.

At the other end of the spectrum are those managers who do little or no portfolio management in-house. These managers generally do not have the necessary in-house portfolio management expertise and they outsource this function to portfolio advisers (in some cases to related portfolio advisers).

It should be noted that mutual fund managers often take different approaches to portfolio management for different types of funds. For example, a manager who generally outsources its portfolio management for its equity funds may act as the portfolio adviser for its index or RSP clone funds. Other managers have specialty funds that are marketed as "multi-manager" products.

Distribution systems

Mutual fund managers choose to distribute their mutual funds to the public in a variety of ways. In the most common scenario, the mutual fund manager is also the principal distributor of the funds. As principal distributor, the mutual fund manager is responsible for marketing the funds. While some of these managers may sell direct to the public, the bulk of their funds are sold through the broker-dealer network.

Some mutual fund managers have opted for a vertically integrated distribution structure. Two of the managers we interviewed had purchased a number of dealer firms with the intention of integrating money management with distribution. While both managers provide marketing and systems support, the dealers are described by the managers to be independent because they are not obligated to sell the manager’s funds.

A number of the mutual fund managers we spoke to utilise an in-house sales force to sell to the public. The bank-owned managers sell their funds through staff at bank branches. The insurance company-owned managers sell their funds through an exclusive career sales force that is dually licensed as mutual fund sales

persons and insurance agents. Two conventional mutual fund managers we spoke with also sell their funds to the public through their own exclusive career sales forces.

An in-house approach is also used by two other groups of managers, but these managers do not sell to the larger public. The credit union-owned mutual fund managers sell through the credit union branches, but, unlike the bank-owned managers, they sell almost exclusively to credit union members. The professional associations sell directly to members of their respective professional associations only.

We also saw a small group of mutual fund managers that are essentially asset managers that sell directly to a limited group of high net worth clients. While some will sell directly to the public if approached by retail clients, others do not promote or advertise their funds to the public at all. Instead, their funds are only available to friends and family of their high net worth clients who cannot open a segregated account because they do not meet the portfolio manager's minimum thresholds. These funds are only quasi-public in nature.

Purchase options

There is a logical connection between a mutual fund's distribution system and the purchase options it is sold under. Funds can be sold as either "no-load"—which means there is no charge associated with the purchase or redemption of the fund—or they can be sold under a sales charge option.[12] As noted above, no-load funds are not widely offered by dealers and brokers, as these persons generally receive no commission for the sales of these funds.

The following managers offer their funds on a no-load basis: bank- and credit union-owned managers, managers run by professional associations, those managers who sell mutual funds direct to their high net worth clients, and one manager who sells direct to the public using an exclusive career sales force. These managers (with the one exception) have a common element: they all offer mutual funds to their clients as part of a larger cluster of financial services. The banks and credit unions offer integrated financial services to their clients; the professional associations arrange pensions, insurance and investment-type services for their members; and the asset managers offer mutual funds as a means of supplementing their high net worth business.

The majority of mutual fund managers sell their funds under a sales charge option through the broker-dealer network, an in-house sales force (excluding the bank- and credit union-owned managers and the one manager mentioned above), and associated dealer firms.

Mutual fund governance: industry experience and attitudes

The discussion above confirms Stephen Erlichman's observation that when it comes to the issue of mutual fund governance; "we are not starting with a clean slate in Canada."[13] Of the approximately 75 mutual fund

[12] Sales charges take the form of a front-end sales charge or a deferred sales charge. Investors who choose a front-end sales charge option pay a sales commission when they buy securities of a fund. The commission is a percentage of the amount invested and it is paid to the dealer. Investors who choose the deferred sales charge option do not pay a commission when they invest in the fund. Instead, the mutual fund manager pays the dealer a commission. However, if the investor sells his or her securities within a specified number of years of buying them (usually 7 years), he or she pays a deferred sales charge.

[13] Supra note 1 at 19.

managers in the country, 28 already have what we would consider to be direct experience with fund governance. These managers spoke positively about the benefits of governance and explored the intricacies of the issues with us. The remaining managers, though lacking in direct experience, were still eager to join the policy discussion. We were particularly interested to hear their questions and concerns. We present what we learned about the industry's experience with, and its attitudes toward, fund governance below.

Will governance agencies add value for investors?

Governance agencies do add value for investors

Ninety percent of the mutual fund managers who have some direct experience with fund governance strongly believe their governance agencies bring value to their mutual fund investors. These managers say their governance agencies offer the following benefits:

- They look out for the best interests of investors, including their long-term interests.
- They bring an ability to deal independently with conflict issues.
- They impose discipline on the manager.
- They oversee and monitor the manager.
- They force the manager to codify informal practices.
- They are a check and balance, a backstop, or a watchdog.
- They encourage a compliance culture.
- They advocate on behalf of investors and forward grass roots concerns.
- They offer advice to the manager.
- They bring another perspective to the table.
- They bring their experience to the table.
- They are a sounding board for the manager.
- They lend credibility to the manager.
- They bring a perception of trustworthiness and integrity.

Many mutual fund managers without any mutual fund governance experience still believe that governance agencies will bring value to investors. This group of managers, which includes both larger and smaller players within the industry, welcomes our general proposal to mandate independent fund governance agencies.

Governance agencies will add little or no value for investors

The most outspoken critics of fund governance are those managers with little prior fund governance experience. The contra-view is that the benefits of independent oversight in the form of a governance agency will not justify their cost. The managers holding this view argue that the fast pace and complexity of the mutual fund industry make it unlikely that truly independent board members will have the requisite understanding of the manager's business to provide effective monitoring. They say the chance of real problems being identified through quarterly meetings, during which board members rely heavily on the manager to provide the necessary information, is very low. According to one critic of mutual fund governance, fund boards are largely cosmetic and while there is nothing wrong with cosmetics, they add little real value for investors.

Governance agencies may add value, but not for our investors

Another group of managers we spoke to believe that, while governance agencies may add value for some investors, they will not add value for their own investors. These managers feel any rules directed at improving fund governance should not be applicable to them.

The bank-owned mutual fund managers tend to tell us that our proposals for improved fund governance will be duplicative for them as they, and the trustees of their funds, are already sufficiently regulated as part of the total bank financial group. Furthermore, they assure us that the oversight provided by the bank structure itself provides greater protection to investors than any board with independent members ever could—particularly because banks are so eager to maintain their own reputations. It is argued that the board of directors of a bank-owned mutual fund manager, populated in part by bank representatives, is more than adequate for our purposes. The CEO of one major bank-owned mutual fund manager asserts that it is the bank representatives on his board, that "keep him honest". Although the banks believe fund governance need not be improved for bank-owned mutual funds, they generally feel traditional mutual fund managers should be subject to some form of independent oversight.

Managers of owner-operated funds tell us that our proposals for improved fund governance should not apply to them because the conflicts of interest these proposals are designed to ameliorate are not present within their structures. Stephen Erlichman agrees "this structure is perhaps the purest model of aligning the interests of the mutual fund investors with the interests of the mutual fund manager."[14]

Are there any alternatives to fund governance?

A number of possible alternatives to improved fund governance were discussed during our meetings with mutual fund managers. These ranged from changing nothing to adopting the U.S. approach to fund governance wholesale.

Maintain the status quo

A small number of the mutual fund managers we spoke to would have us maintain the status quo. They believe the existing rules are sufficient to prevent any problems from occurring in the mutual fund industry, provided the regulator's compliance and enforcement departments perform their jobs effectively.

An enhanced role for auditors

[14] *Supra* note 1 at 106.

Rather than have us introduce an independent governance agency, some fund governance detractors would have us increase the role of a fund's auditors. This alternative is based on the understanding that auditors have an intimate understanding of the mutual fund business. One mutual fund manager we met with expressed the concern that governance agencies do not have the ability to "drill down" and find real issues, particularly if the manager is not forthcoming or is unscrupulous. This manager went on to explain that only an audit function could discover real problems. Another manager agreed that the auditors could provide more effective oversight than a governance agency that meets only quarterly.

In contrast to this view, some mutual fund managers told us that their auditors already review most of the important matters pertaining to their funds and they disagreed with the position that there should be an increased role for auditors. One such manager went on to remind us that auditors would increase their fees if given extra duties and predicted that the industry would resist the increased costs.

The auditing firms we spoke with explained to us that auditors with additional responsibilities cannot be a real substitute for a governance agency because good governance requires more than just careful auditing, it also requires the exercise of discretion.

Independent oversight, but at the fund manager level

While some of the managers we spoke with agree there is a need for independent oversight, they argue they can achieve sufficient independence by putting independent directors on their own boards of directors. These fund managers feel their own interests are already sufficiently aligned with mutual fund investors and they believe that independent directors can manage any conflicts of interest that may arise.

The U.S. approach

Our research shows that the approach to mutual fund governance taken by the Securities and Exchange Commission (the SEC) in the U.S. would not be well received in Canada. A number of the mutual fund managers we met with felt the CSA should be wary of taking our cues from the SEC. Many cautioned that the SEC's rules are too complex to transplant into Canada. One mutual fund manager with a U.S. parent agreed that the SEC rules are "way too technical and minute" and explained that this denies U.S. mutual fund directors the flexibility they need to address issues.

The governance principles: industry experience and attitudes

We explain in the concept proposal that each mutual fund manager may decide how to legally structure its own governance agency, so long as that governance agency satisfies the broad standards, called governance principles, established by the CSA.

All of the existing mutual fund governance agencies already abide by many of our governance principles to a greater or lesser extent. This part of the report:

- compares the industry's experience with mutual fund governance to the standards proposed in our governance principles; and

- presents the range of industry views on our specific proposals.

1. Each manager will establish a governance agency

The proposal

We state in the concept proposal that each mutual fund family should have at least one governance agency to oversee the fund manager's management of its mutual funds. We do not propose to specify the maximum number of mutual funds that may be overseen by any one governance agency.

Industry experience

All of the mutual fund managers we surveyed have established only one governance agency to oversee some or all of their funds. In other words, none of the fund families have more than one governance agency, although, technically, fund families with mutual funds structured as corporations, have one governance agency per corporate fund. A board of directors for a corporate fund acts for one fund, but the same individuals may sit on the boards of all the corporate funds managed by the same fund manager. Generally, directors of corporate funds act as directors on the boards of less than 10 mutual funds. The remaining governance agencies tend to oversee a larger number of funds. Eight of the managers surveyed have governance agencies that oversee more than 50 mutual funds. Three of those eight oversee more than 80 mutual funds.

Mutual fund managers with many funds tended to admit that it is a lot of work for their agencies to keep up with a large number of funds. However, we are told that the governance agency for one very large manager successfully deals with well over 100 funds, in part, by placing its reliance on the legwork of staff at the fund manager. Another large fund managers' governance agency effectively oversees over 70 funds by using checklists, charts and summaries to streamline the review process.

Industry views

All of the managers we interviewed were opposed to the prospect of our mandating the use of one governance agency per fund. One fund manager went so far as to say the idea was "ludicrous" because even General Motors has only one board overseeing a hundred different plants. We believe the implication here is that the different mutual funds in a fund family are really quite similar, in contrast to different plants in the example given. Another fund manager likes to draw a colourful analogy between the different mutual funds in its mutual fund complex and the different flavours of ice cream for an ice cream manufacturing company. On the other hand, another mutual fund manager warns us of accepting this analogy because ice cream has set variables, while mutual funds do not.

There appears to be a consensus in the industry that one governance agency will benefit from overseeing a number of funds. In the United States, where each mutual fund has its own board of directors, directors commonly hold multiple seats across a number of funds within a family. According to one study, a significant benefit arises from having common individuals sitting on a number of different boards because it increases their knowledge base and gives them a greater impact on fund operations.[15]

Some of the managers we spoke to admit that one governance agency may not be able to effectively oversee a very large number of funds. For example, a representative from one company with over 50 mutual funds

[15] Tufano P., Sevick M., "Board structure and fee-setting in the U.S. mutual fund industry", *Journal of Financial Economics*, Vol. 46 (3) (1997) pp. 321-355.

told us it would be "a nightmare" for a governance agency with real duties to oversee that many funds because it wouldn't be able to get into all the relevant details. At the same time, none of the mutual fund managers we saw believe the regulator should specify a cut-off—rather, most managers agreed that fund managers and governance agencies should be given the discretion to decide for themselves what they can and can't handle.

2. The governance agency will be of a sufficient size

The proposal

We propose that each governance agency have no fewer than three individual members.

Industry experience

All of the governance agencies currently in existence have at least three members. The vast majority (over 90 percent), have more than three members. Governance agency sizes in Canada range from 3 members all the way up to 17 members. The most common board size is five members and the second most common is eight.

Industry views

In one U.S. study, a small board of three to eight members was found to be ideal because a board of this size is large enough to staff its committees and subcommittees without unduly increasing the fees charged to investors.[16]

3. Governance agency members will be independent

The proposals

We propose that a majority of governance agency members be independent of the mutual fund manager. We also propose that an independent member should act as the governance agency chair.

Industry experience

The existing governance agencies have varying degrees of independent representation on them. Roughly 60 percent have a majority of members that are independent of the mutual fund manager while some 40 percent do not. The majority of the governance agencies falling into the second category could easily meet our independence requirement by replacing one related member with an independent or simply reducing the number of related members.

Interestingly, we found that most of the advisory boards have at least a majority of independent members and a number of advisory boards are completely independent of the manager. This may be because the

[16] *Ibid.*

advisory board model is premised on the notion of independent individuals providing advice to the manager.

Industry views

Most of the mutual fund managers we spoke to agree the notion of independence is central to the purpose of our proposed governance agency. Members of the IFIC Fund Governance Committee tell us that the "market is starting to demand independence". A mutual fund manager that does not have a governance agency explained to us that the media is feeding the market's focus on independent fund governance.

One manager, whose governance agency lacks independence, believes that independence might, in fact, hamper the effectiveness of governance agencies and argues that internal people have more insight into the operations of the mutual fund manager. This manager went on to say that the addition of independent, external people would only compromise the quality and rigor of the governance discussions. It was also suggested that internal members of the governance agency would be less forthcoming in the presence of "outsiders".

We were told by more than one mutual fund manager that an independent member should be the chair of the governance agency. A corporate governance study has shown that combining the role of board chair and company CEO is problematic because the influence exerted by the CEO tends to reduce the board's effectiveness.[17]

4. The role of the governance agency will be to oversee

The proposal

We state in the concept proposal that the governance agency's role is to ensure the mutual fund manager acts in the best interests of investors by overseeing its actions vis-à-vis the mutual funds. We go on to clarify that the governance agency is to act in a supervisory capacity and is not to interfere with the day to day management of the funds.

Industry experience

Our review of mutual fund disclosure documents demonstrates that the concept of governance agencies safeguarding the best interests of investors is central to mutual fund managers. The words "best interests of investors" are present in more than 20 of the 80 or so mutual fund AIFs we looked at. Of the mutual fund managers with existing governance agencies, 80 per cent indicated that their governance agencies ensure the manager acts in the best interests of investors.

Industry views

The vast majority of the managers we spoke to agreed that "oversight" is not to be confused with "management". However, it is not always clear where oversight ends and management begins. To cite an example, one manager feels strongly that its governance agency should not be in charge of monitoring the performance of its funds, while many others feel this falls squarely within the scope of a governance agency's duties.

[17] Collier P., Gregory A., "Audit committee activity and agency costs", *Journal of Accounting and Public Policy*, Vol. 18 (4-5) (1999) pp. 311-332.

5. The governance agency will carry out specific responsibilities

As one might expect, in the absence of a regulatory regime for mutual fund governance, the responsibilities of the different governance agencies in place today vary widely. At one extreme, some governance agencies have only a vague duty to provide advice to the manager. At the other extreme, some governance agencies have a long list of duties that may include acting as the audit committee of the funds, approving the prospectus and financial statements, and reviewing fund performance and management expense ratios.

a. Meet regularly with the manager

The proposal

We expect each governance agency to meet regularly with the mutual fund manager.

Industry experience

Most of the governance agencies we surveyed meet at least quarterly. Only four of the 28 governance agencies meet less than 4 times a year. Some of the governance agencies met eight times in the last year and one governance agency met once a month.

b. Identify material policies and procedures

The proposal

Each governance agency will be expected to determine which policies and procedures of the fund manager are material to investors. If the fund manager does not have any specific written policies and procedures, the governance agency will ask that these be developed.

Industry experience

Internal policies, practices and guidelines are an integral part of most managers' fund governance mechanism. Of the 70 managers in our database, only 11 stated that they have no policies, practices or guidelines in place. The remainder made explicit reference to at least one policy, practice or guideline, although often this one policy or guideline was an industry developed code of ethics, and not the types of policies and procedures we list in the concept proposal.[18]

c. Monitor compliance with policies and procedures

The proposal

We propose that each governance agency monitor the mutual fund manager's compliance with its policies and procedures.

[18] A significant number of fund companies rely on policies, codes or guidelines established by an industry group. A large number rely on the IFIC Code of Ethics for Personal Investing while a handful use the AIMR Code of Ethics and Standards of Professional Conduct, the ICAC Code of Ethics in the Statement of Function & Principles of the Professional Investment Counsel, or the IDA Code of Conduct.

Industry experience
Over 70 percent of the existing governance agencies already approve and monitor certain policies and procedures of the mutual fund manager.

d. Consider and approve benchmarks

The proposal
We will require each governance agency to consider and approve the mutual fund manager's choice of benchmarks against which fund performance will be measured. Governance agencies will also measure fund performance against these benchmarks.

Industry experience
Almost 80 percent of the existing governance agencies already monitor the performance of their mutual funds against benchmarks.

e. Act as the audit committee

The proposal
We will require each governance agency to act as an audit committee and approve the financial statements of the funds.

Industry experience
Over 60 percent of the existing governance agencies act as an audit committee and approve the financial statements of the funds. Many of these audit committees are independent. One mutual fund manager has its audit committee meet with the funds' auditors without management present.

According to our review of fund governance disclosure, it appears that an audit committee may have some, or all, of the following responsibilities:

- reviewing the operations of the fund
- ensuring policies are maintained
- reviewing the risk profile of the fund
- evaluating systems of internal controls and reporting procedures.
- reviewing the annual financial statements
- reviewing the results of the external auditors' review of the financial reporting process and to report any unresolved issues to the board of directors
- making recommendations to facilitate improvements to the financial reporting.

Industry views
One corporate governance study has shown that audit committees, composed entirely of independent directors, are more effective at reducing agency costs—a prime consideration for mutual funds.[19]

[19] *Supra* note 15.

6. Members of the governance agency will be subject to a standard of care

The proposal

Governance agency members will be required to exercise their powers and discharge the duties of their office honestly, in good faith and in the best interests of investors. In so doing, they will be required to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. Members of a governance agency will only be liable for investor losses if those losses result from a failure of the governance agency to discharge its duties in accordance with the standard of care.

Industry experience

Because of corporate statutes, the members of a corporate mutual fund's board of directors are clearly subject to a standard of care. The issue is not as clear-cut in the context of mutual fund trusts. Our survey found that just over half of the mutual fund managers with governance agencies for their mutual fund trusts believe their governance agency members attract potential legal liability for their actions. Just under 50 percent believe that governance agencies for mutual fund trusts have no such potential liability. We believe one of the benefits of our proposals for improved fund governance is that it will clarify this issue and ensure consistency throughout the industry.

Industry views

Liability of the members of the proposed governance agency was one of the most controversial topics we broached with the mutual fund managers we interviewed. Not surprisingly, there was no consensus view on this issue—in fact, many of the managers spoke at cross-purposes. We found that there was a general lack of understanding of what standards of care in this context means. Certain managers spoke about the benefit of having a "deep pocketed" governance agency, such as a registered trust company. Other managers worried that any liability attaching to a governance agency will dilute, or be duplicative of, the manager's liability. Both of these ideas are not consistent with the kind of standard of care we envision for members of a governance agency. Any liability on the part of the governance agency members would not detract from that of the fund manager in the event of a loss for which the fund manager is responsible. The purpose of requiring members to follow a defined standard of care is to ensure that members of that governance agency take responsibility for their actions.

A number of the managers told us personal liability for governance agency members is not necessary because risk to their reputation is a greater motivator than the risk of financial loss. We note that the members of the current governance agencies are often experienced business people with excellent reputations. On the other hand, one manager insisted that liability is necessary for its governance agency to "do its job".

7. Appointment of the governance agency members

The proposal

The first members of the governance agency may be appointed by the mutual fund manager or elected by investors, at the option of the fund manager. Thereafter, individuals chosen by the remaining governance

agency members will fill vacancies on the governance agency. Disclosure to investors about governance agency appointments and resignations will be required.

Industry experience

With one exception, every mutual fund manager with a governance agency appointed the initial members of that agency. One mutual fund manager had its investors ratify its initial member choices at a special meeting. Mutual funds structured as corporations, either hold annual meetings to permit investors to elect a slate of directors, or have the mutual fund manager, as holder of the voting common shares elect them. In either case, corporate law dictates how boards of directors of corporations are elected.

Vacancies on governance agencies for trust funds are currently filled in a number of ways:

- manager appoints new members (50 percent)
- governance agency appoints new members (18 percent)
- manager nominates new members and governance agency appoints them (18 percent)
- governance agency nominates new members and manager appoints them (3 percent)
- investors ratify new appointments at special meeting (7 percent)
- external body appoints new members (3 percent)
- independent trustee appoints new members (3 percent)

Industry views

The industry did not have very much to offer us on the appointment of governance agency members. While most managers agreed that an election by investors is the most obvious approach, most of them also pointed out that investor apathy, coupled with the fact that most governance agencies will oversee more than one fund, make this impractical.
According to most of those we spoke with, appointment by the manager with disclosure of the choices to investors is a more practical solution.

8. Compensation of the governance agency members

The proposal

We propose to allow each governance agency to set its own compensation, which can be paid out of fund assets, provided certain disclosure to investors is given. Fund managers will have a "veto" in case of perceived unreasonable levels of compensation.

Industry experience

The compensation paid to governance agency members ranges from nothing to $30,000 per annum. The average per annum fee is between $15,000 to $20,000. Almost 30 percent of the managers surveyed do not pay their governance agency members, because the governance agency positions are voluntary or the members are otherwise compensated as employees or officers of the mutual fund manager. None of the mutual fund managers included in our survey offer mutual fund units or shares to their governance agency members as part of a compensation package.

Only 2 of the 28 governance agencies set their own compensation. Another two set their own compensation in conjunction with the manager. The remaining managers set the compensation for governance agency members.

More than half of the managers surveyed indicated that fees and costs are paid out of fund assets—the remainder pay the fees and costs of the governance agency themselves.

Industry views

One mutual fund manager suggested that governance agency members and the manager should jointly approve compensation. This manager pointed out that U.S. fund directors tend to "jack-up their own fees". They went on to conclude that we must give the manager some "blocking-power".

The majority of managers we asked believed that members of the governance agency should be compensated out of fund assets rather than by the manager. This is said to be logical because the governance agency is really there for the investor. It also avoids a conflict situation where the governance agency might be swayed towards the fund manager due to the compensation the manager is paying the members.

One manager urged us to consider requiring members of the governance agency to be compensated in units of the funds they oversee. This, it was argued, will align their interests with those of investors.

9. Dispute resolution

The proposals

If a governance agency's disagreement with the mutual fund manager cannot be otherwise resolved, the governance agency will have the option to put the issue before investors at special meetings called for that purpose. If the governance agency chooses not to go to investor meetings, it must tell investors about any unresolved dispute and how it proposes to deal with it. The governance agency will not have the power to terminate the fund manager's appointment as manager, without authorization from the investors.

A fund manager may decide that the governance agency for its mutual funds or an individual member is not performing duties or carrying out responsibilities in accordance with the standard of care. Fund managers will have the option of calling investor meetings to have investors terminate the appointment of governance committee members and elect new members.

Industry experience

More than 60 percent of the managers surveyed indicated that they have never disagreed with their governance agency. The managers who have had such disputes tell us these are always resolved after discussion between the manager and the governance agency. None of the existing governance agencies have put disputes before investors, either at a meeting or in a written communication; however, one governance agency has threatened to go to investors with unresolved issues.

Industry views

The mutual fund managers we spoke to almost unanimously believe our proposed governance agency should not have the power to terminate the manager. Only one manager questioned whether a governance agency without this avenue of recourse would "lack teeth". The arguments against allowing the governance agency to fire the manager are summarized as follows:

- Investors are purchasing the manager's expertise as much as they are purchasing a product and they would be very surprised to find their fund was no longer managed by that fund manager.

- Practically speaking, a governance agency simply would not fire the manager without authorization from investors.

- A "kooky" or "belligerent" governance agency with "its own agenda" should not have this kind of power.

The ability to call a meeting of investors, though not as vehemently opposed as the ability to fire managers, also received mixed comments. A manager with a well-established governance agency explained that their governance agency would resign before a dispute could ever be brought before investors. Other managers agreed that business reality would prevent this avenue of recourse from being pursued. Many managers told us the ability to call investor meetings is not meaningful or practical because nobody ever attends these meetings and "you need to beat the bushes to get a quorum". One manager reminded us that investors invest in mutual funds precisely because they don't want to be bothered overseeing their investments – "you are asking them to do something they don't want to do when you call them to meetings".

Some managers told us the ability to issue a press release or notify the regulator of a problem is a sufficient avenue available for governance agencies to resolve disputes with fund managers. Another manager said it is enough that the governance agency be entitled to consult with independent counsel. A large number of managers felt the resignation of governance agency members would send a powerful message to the public and as such, the CSA did not need to mandate any specific dispute resolution.

10. Reporting to investors

The proposal

We propose that investors receive point of sale disclosure of the name and background of each governance agency member, the compensation paid to governance agency members and the responsibilities of the governance agency. We also propose that they receive annual reports from the governance agency including information on the activities of the governance agency, any changes in its membership and compensation, its assessments of its performance, and any unresolved disputes between the governance agency and the mutual fund manager.

Industry experience

We were surprised to learn that two of the mutual fund managers surveyed tell their investors absolutely nothing about their governance agency (given the AIF requirements of NI 81-101, this is particularly surprising). The vast majority, on the other hand, do make some disclosure. More than half of the mutual fund managers we saw put the names of their governance agency members in the AIF for their funds. Just less than half of the managers disclosed the compensation paid to their governance agency members in an AIF. Almost 60 percent of the mutual fund managers surveyed describe the mandate of their governance agency in an AIF

Three of the existing governance agencies provide an annual letter or information notice to investors. Three others noted that their annual report contains information about their governance agencies. Of the managers

surveyed, 50 percent have had members resign in the past, but investors were informed in only 15 percent of those cases.

Industry views

The managers we spoke to unanimously agreed that investors should be informed about the governance of their mutual funds. Reporting to investors is significant because it creates a nexus between the governance agency and investors.

Registration of mutual fund managers: industry experience and attitudes

On the registration of fund managers "pillar", we saw much more uniformity in the views expressed. Every manager agreed that minimum standards of some sort should be imposed on fund managers and they agreed that registration is an appropriate tool to accomplish this. In fact, some voiced the opinion that it is "high time" managers get registered.

The only real caveat being that the new registration system should not be duplicative or arcane. IFIC's Fund Governance Committee suggested that mutual fund managers should only be required to register in one jurisdiction. Managers who are already registrants should be able to simply "check-off one more box" on their annual registration.

Minimum proficiency

One fund manager told us that every mutual fund manager needs at least 3-4 people who will: (a) act as CEO and who has the qualifications of an entry-level fund manager; (b) act as CFO – who has a financial background; (c) handle compliance; (d) look after administrative matters and customer service; and (e) look after fund accounting.

Ability to monitor third-party service providers

A fund manager told us that even if certain functions are out sourced to third-party service providers, the mutual fund manager should have sufficient qualified staff to monitor these functions. Another echoed this comment: "sufficient competencies are required within the fund manager to enable it to effectively oversee the activities of service providers". Another fund manager suggested that we think about two levels of registration with different proficiency requirements for "virtual" managers versus full service managers.[20]

Minimum capital requirements

Thoughts on whether fund managers should be subject to minimum capital requirements were quite equally divided. Some insist that minimum standards for mutual fund managers must include capital requirements. This is so that investors may have some comfort that there is enough money available to address manager risk. A "deep pocket" must be available to adequately compensate investors in the case of loss. Those in favour of capital requirements say that managers need sufficient capital to cover the operating expenses of their funds for at least five years in the event the funds gets little business.

[20] "Virtual" managers are managers who have outsourced all essential functions to third-party service providers. These managers are often "one-man-shows", run by a founding entrepreneur.

Smaller mutual fund managers expressed the concern that minimum capital requirements could put them out of business. At the same time, a relatively new entrant into the fund business reminded us that new mutual fund managers already need a substantial amount of capital to enter the market. These fund managers advised us not to concern ourselves too greatly with creating barriers to entry for smaller mutual fund managers as non-regulatory barriers are already significant and serve, in a practical sense, to keep mutual fund managers under a certain size out of the industry.

Re-evaluation of product regulation: industry experience and attitudes

The third pillar of our renewed framework is the one that has most fund managers excited. Those mutual fund managers with related underwriters or that are part of a financial group see this commitment to re-evaluate product regulation as a solution to their problems with the current conflicts regime. They see independent fund governance as the only practical solution for the problems they are experiencing with our current conflicts regime.

While most of the industry sees the relaxation of the existing product regulation as the "sugar on the pill", a small group of mutual fund managers are not convinced the CSA can or should re-evaluate the detailed rules in NI 81-102. For the most part, these managers would prefer not to swallow the pill at all because they are not proponents of fund governance or relaxation of the product regulation. Interestingly, these managers tend to prefer the certainty of set product regulation and they are not convinced the existing rules should be relaxed.

Others we spoke with felt that "removing portions of the existing regulation will only open up more risk". One fund manager with a governance agency in place, is "skeptical of how much we can take off the table". It feels it is important to maintain the "rule of law" and warns us that the same people who are pushing for more flexibility may come to us later for guidance on these very matters. Another fund manager expressed concerns about whether independent governance agencies would be qualified to address conflicts.

Proposed framework for cost-benefit analysis

The need for a cost-benefit analysis

Economists use cost-benefit analysis as a complementary tool for decision making and also to communicate reasons for policy changes or decisions. Through a cost-benefit analysis, economists can estimate the costs of an initiative and compare those costs to the estimated benefits. Some costs and benefits are easy to quantify—that is a dollar figure or dollar range can be estimated. In this case, a quantitative, or numerical, analysis can be completed. Other costs and benefits are more subjective and are difficult, or even impossible, to quantify. In this case, a qualitative analysis is used.

We know that the costs of improving fund governance and the regulation of mutual fund managers must be proportionate to the significance of the regulatory objectives we seek to realize.[21] To ensure that we do not impose unjustifiable costs on the mutual fund industry and investors, the OSC's chief economist will prepare a quantitative cost-benefit analysis of our proposals. This quantitative analysis will supplement the qualitative benefits we cite in concept proposal in support of our renewed framework for regulating mutual funds and managers.

We have information about costs, but little numerical data of benefits

We know from our industry consultations that the costs attached to the CSA's proposed renewed framework of regulation are a matter of some interest and concern. For this reason, our chief economist has estimated, on a preliminary basis, the costs of creating and operating a governance agency of the nature we propose. We outline his preliminary findings below.

The benefit side of a cost-benefit analysis is almost always more difficult to define than the costs. This is particularly true in our case—mutual fund governance represents an important shift in our regulatory strategy and although, we believe it will be accompanied by qualitative benefits, these benefits will likely be very difficult to quantify. Benefits of our proposals may relate to prevention of negative outcomes which, given that they have not yet occurred, cannot be readily quantified. For example, how does one quantify the costs versus the benefits of buying a fire extinguisher? We cite a recent OECD paper in the concept proposal (see footnote 8). The authors of that report have an interesting perspective on this issue:

> The OECD countries have used a variety of governance structures in the CIS [collective investment schemes or mutual funds] sector. The fact that very few countries have had any crises in the CIS sector and that CIS have become major repositories of wealth would suggest that existing governance mechanisms are adequate and that public confidence is high. At the same time, the fact that fraud and misallocation of funds occurred in several European countries before the introduction of adequate legal frameworks and that a serious systemic crisis arose in Korea, where adequate standards were not effectively enforced, provides evidence that such safeguards are needed. At the same time, once a body of acceptable standards has developed and governance structures mature to the point that those assigned an oversight role can compel participants to apply those standards, it becomes very difficult to demonstrate that any particular system provides better investor protection than others.

We expect to be able to articulate some quantitative benefits that will come from our proposals. We outline the kind of analysis our chief economist will carry out in this report. We invite your comments on our proposed cost-benefit analysis.

The costs of improved fund governance

The cost estimates for mutual fund governance were relatively easy to define. We began by looking at what it costs mutual fund managers with existing governance agencies to operate those governance agencies. These operational costs were based on the information we received from our survey of mutual fund managers with existing governance agencies. Although these governance agencies are not identical to the structures we propose, some of the costs associated with running them should remain constant. We further

[21] See section 2.1 of the *Securities Act* (Ontario).

refined our estimates by looking into the costs associated with boards of directors of Canadian corporations

Explanation of our cost analysis

We make a number of assumptions in this analysis:

a. A universe of 80 mutual fund managers in Canada, of which 35 are "large" managers and 45 are "small" managers. Large fund managers are those with assets under management of greater than $2 billion. Small fund managers are those managing assets under $2 billion.
b. Large managers will have boards made up of 12 members (11 directors + 1 chair per board). This number reflects the average board size for Canadian corporations. Small managers will have three member boards (2 directors + 1 chair per board). This number reflects the minimum proposed requirement.
c. $411 billion in assets under management by the total mutual fund industry. This figure is the assets under management total as of the date of our survey (July 2001). The 45 small managers have 3 percent of this total.
d. Currently, the mutual fund managers with governance agencies are spending $4.2 million a year to run them. This figure is based on the data derived from our survey.
e. The mutual fund industry currently incurs $5.0 billion to cover total expenses (fund manager expenses). This figure is derived from a review of fund manager financial statements (filed with the Commission) and includes expenses that may be charged to the mutual funds. Not all of these total expenses may be charged to the mutual funds. Small fund managers incur $226 million of fund manager expenses.

The following elements form the basis of our estimate of the one-time costs of setting up a governance agency:

- Average executive search costs for a board of directors: $149,514 (range: $120,000-$179,027)
- Legal fees, including fees for amending constating documents: $75,000

The following elements form the basis of our estimate of the annual costs of running a governance agency (total annual governance costs):

- Average total compensation per director: $46,249-$72,199
- Average total chair compensation: $148,054

  The director and chair compensation estimates are based on the following elements:
  - Average director retainer fee: $25,000
  - Average fee per meeting: $1,000-$1,300
  - Average fee per committee member: $4,000
  - Average fee per committee chair: $6,000

- Average director's liability insurance: $112,500 (small manager) - $300,000 (large manager)
- Other associated operational and administrative board costs: $30,000
- Annual fees for independent legal advice: $75,000

The estimated total one-time set-up cost for the industry is: $17.9 million

The estimated net* total annual governance costs for the industry are:

- All managers: $65.9 million
- Small managers: $21.6 million

*This amount is net of what the industry is already spending to operate governance agencies.

Total annual governance costs as a percentage of industry assets:

- All managers: 0.016 percent
- Small managers: 0.178 percent

Total annual governance costs as a percentage of fund manager expenses:

- All managers: 1.3 percent
- Small managers: 9.5 percent

The costs of our proposals for improved fund governance on an annual basis (after payment of the initial one-time set up costs) will represent 1.3 percent of fund manager expenses and 0.016 percent of assets under management. Our preliminary view is that our proposals for improved fund governance should not place an undue burden on mutual fund managers or mutual funds.

For the small mutual fund managers in Canada (managing 3 percent of the industry's total assets), potential annual governance agency costs will average 9.5 percent of the fund manager expenses currently incurred by those fund managers or 0.178 percent of assets under management by those fund managers. Although we recognize these costs will represent a significant addition to the start-up costs for new mutual fund managers, this additional outlay should not present an insurmountable obstacle for these managers.

Our chief economist cautions that a cost-benefit analysis applies primarily to actively managed mutual funds where profit margins tend to be wider and there is greater scope for conflicts between the investors' interests and that of fund managers. Positive benefits versus costs may not be as apparent for those mutual funds where margins are thinner and conflicts are minimized.

For passively managed mutual funds, in particular, where fund management expenses can run under 20 basis points, the potential for significant savings to investors in these funds is limited. Adding additional costs to these funds is unlikely to generate significant net savings and could, in the case of smaller mutual funds, make them uneconomical to run. A similar situation could exist for fixed income funds. The range of performance in these funds, from top quintile to bottom quintile is very narrow. Similarly, the risk- adjusted return to investors in these funds is much lower than in actively managed funds.

For a large family of mutual funds, governance agency costs could be apportioned across mutual funds according to the degree of risk of those funds. This would result in a much lower charge to index, money market and other fixed income mutual funds, which would improve the cost-benefit ratio for these funds.

The quantitative benefits to be included in our analysis

Our chief economist will be reviewing the following benefits for Canadian mutual funds, among others, to develop a quantitative cost-benefit analysis.

Improved fund governance may reduce costs for investors

Some commentators have suggested that governance agencies may operate to lower, or at least limit, increases to the fees charged to investors. We will investigate whether there is merit to this assertion and attempt to quantify any such benefit.

Canadian mutual funds may benefit from carrying out previously prohibited related-party transactions

Substantial benefits to investors and the industry may arise from the relaxation of the conflict of interest provisions under our improved governance regime. Mutual funds will be able to take advantage of certain related-party transactions that are currently prohibited. Mutual fund managers will also be able to avoid legal and regulatory fees associated with preparing applications to ask the regulators for permission to carry out these transactions. As we move forward with our proposals we will provide an analysis of these and other potential benefits.

Canadian mutual funds may gain access to international markets

We note in the concept proposal that Canada is one of the few remaining countries in the world that does not mandate some form of independent mutual fund governance. We also note that reforming our regulation to make it consistent with international standards may improve the Canadian fund industry's reputation and may afford Canadian mutual funds easier access to international markets where foreign mutual funds are welcomed such as Hong Kong. We will analyze any potential benefits for the Canadian industry, keeping in mind that Canadian mutual funds may gain access to international markets at the competitive expense of international funds entering the Canadian market.

Outcomes of our empirical research

Our empirical research has led us to a number of significant realizations. As a consequence, we believe that the renewed framework proposed in our concept proposal is very much in touch with the practical realities of the Canadian mutual fund industry. What follows is a brief summary of the outcomes of our research.

The industry accepts the need for improved fund governance

Mutual fund governance is not a new concept for mutual fund managers. In fact, more than a third of the industry has already adopted some form of governance agency voluntarily. There is widespread agreement among the managers with governance agencies that their governance agencies add value for investors. The remainder of the industry, though lacking in direct experience, is already familiar with the concept of independent oversight. Many managers without governance agencies agree that regulation in this area is overdue. The market is starting to demand good governance and even the most reluctant mutual fund managers accept that independent governance agencies might be a good marketing tool.

A one-size-fits-all approach is untenable

The mutual fund industry in Canada is diverse. Our market supports mutual fund managers of all shapes and sizes. The business of a conventional mutual fund manager bears little resemblance to that of a bank-owned mutual fund manager, a "virtual" fund manager, or a professional association that offers mutual funds to its members. A one-size-fits-all solution is not ideal for in an industry such as ours. Instead, we have chosen to capture the essence of improved fund governance in broad governance principles that can be applied flexibly to suit each mutual fund manager's business needs.

The costs of improved fund governance will not be prohibitive

Our preliminary cost analysis shows that the costs of creating and operating a governance agency will not be prohibitive.

A registration regime for mutual fund managers is long overdue

The Canadian mutual fund industry is in favour of mutual fund manager registration. Many described the current absence of manager registration as a gap in the regulation that needs to be filled. The only concern is that we craft an efficient and effective regime.

Loosening of the current conflicts regime is much anticipated

The vast majority of industry participants await the relaxation of our current related-party prohibitions. Many mutual fund managers who are not yet convinced of the benefits of improved mutual fund governance are willing to adopt governance agencies if it means the conflicts and other product regulation will be reassessed.

The industry is ready to comment on our proposed renewed framework

Many in the industry have noted that our concept proposal is long overdue. We discussed concepts with industry participants that have been suggested for years, but not acted upon by the regulators or the industry at large. The industry welcomes our continuing the debate and wants to understand the details of our proposed requirements. We can expect solid participation and feedback from industry participants and IFIC through our comment process.

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesScource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

Exempt Financings

The Ontario Securities Commission reminds issuers and other parties relying on exemptions that they are responsible for the completeness, accuracy, and timely filing of Forms 45-501F1 and 45-501F2, and any other relevant form, pursuant to section 72 of the *Securities Act* and OSC Rule 45-501 ("Exempt Distributions").

Reports of Trades Submitted on Form 45-501F1

Trans. Date	Purchaser	Security	Price ($)	Amount
03Dec01		902630 Alberta Inc. - Flow-Through Common Shares	96,774	96,774
01Feb01	3 Purchasers	ABC Fundamental - Value Fund - Units	475,758	158,586
01Feb01	1017992 Ontario Ltd.	ABC American - Value Fund - Units	150,000	23,139
01Dec01	Keneis, Henry	Abria Diversified Arbitrage Trust - Class B Units	78,000	4
01Feb02	8 Purchasers	Absolute Diversified Growth and Income Focus Trust Fund	800,000	80,000
30Nov01 to 20Nov01	44 Purchasers	AIC American Focused Plus Fund - Mutual Fund Units	4,429,838	459,015
12Feb02	31 Purchasers	Argonauts Group Ltd. - Common Shares	12,238,980	5,563,173
01Feb02	CIBC Imperial Bank of Commerce	Bell Canada - Cumulative Redeemable Class A Shares, Series 15 and Cumulative Redeemable Class A Shares, Series 19	100,000,000, 10,875,000	4,000,000, 435,000 Resp.
04Jan02	Select Financial Services Inc.	BPI American Opportunities Fund - Units	144,603	1,185
18Jan02	3 Purchasers	BPI Global Opportunities III Fund - Units	396,022	4,194
04Jan02	Cartier Partners Financial Service and IPC Investment Corp.	BPI Global Opportunities III Fund - Units	160,686	1,638
05Dec01	Hatch, Douglas	Canada's Choice Spring Water, Inc. - Units	100,000	100
06Feb02	21 Purchasers	Canimine Resources Corporation - Units	190,900	47,725
31Jan02 to 01Feb02	242	CGO&V Balanced Fund - Units	3,712,071	300,547
31Jan02 to 01Feb02	11 Purchasers	CGO&V Cumberland Fund - Units	553,526	39,508
31Jan02 to 01Feb02	35 Purchasers	CGO&V Enhanced Yield - Units	592,534	59,409

Trans. Date	Purchaser	Security	Price ($)	Amount
31Jan02 to 01Feb02	82 Purchasers	CGO&V Hazelton Fund - Units	2,542,122	197,565
31Jan02 to 01Feb02	67 Purchasers	CGO&V International Fund - Units	3,972,257	949,799
01Dec01	Solursh, Harvey H.	CIBC Oppenheimer Whistler International, Ltd. - Shares	333,000	2,995
01Feb02	Excalibur Limited Partnership and BH Capital Investments, LP	Clinton Riverside Fund, L.P. - Limited Partnership Interests	1,604,400	1,604,400
17Jan02	AIM Funds Management Inc.	Coinmach Corporation - 9% Senior Notes due 2010	$1,538,000	$1,000
01Jan02	Ontario Teachers's Pension Plan Board	D. E. Shaw Composite International Fund I - Trust Units	8,461,194	8,461,194
01Apr01 & 01May01		D.E. Shaw Composite International Fund 1 - Trust Units	8,306,889	8,306,889
04Feb02	32 Purchasers	DALSA Corporation - Special Warrants	22,710,000	2,271,000
01Feb02	Ontario Teachers's Pension Plan Board	Dalton Japan Long/Short Offshore Fund, Ltd. - Class O Voting Redeemable Shares	23,860,500	150,000
28Nov01		Digital Fairway Corporation - Class A Preferred Shares	1,297,923	8,112,016
25Jan01 to 23Nov01	13 Purchasers	Duncan Ross Associates Ltd. - Units	5,067,636	16,735
15Nov01 to 28Dec01	22 Purchasers	Duncan Ross Associates Ltd. - Units	381,888	2,012
15Feb02	59 Purchasers	Exclamation International Incorporated - Common Shares	2,610,250	10,441,000
01Feb02	The Canada Life Assurance Company	GLC Gestalt European Fund Ltd. - Class A Common Shares	2,384,550	2,384,550
11Feb02	Paradigm Capital Inc.	Global Access Communications Inc. - Common Shares	14,289	71,446
31Jan02	RoyNat Capital Inc.	Ground Effects Ltd. - Common Shares	1	900
06Sep01		Hillsdale Canadian Market Neutral Equity Fund - Class I Trust Units	18,500,000	185,000
06Sep01		Hillsdale Canadian Aggressive Hedged Equity Fund - Class I Trust Units	18,500,000	185,000
03Dec01	Redmond, Peter	IC3 Fluid Innovations Inc. - Common Shares	23,656	7,500
03Dec01	Gosselin, Dan	IC3 Fluid Innovations Inc. - Common Shares	15,771	5,000
30Dec01	Manjuris, Dean	IC3 Fluid Innovations Inc. - Common Shares	47,706	15,000
04Dec01	Luk, Fred	IC3 Fluid Innovations Inc. - Common Shares	62,848	20,000
04Dec01	Coolican, Peter	IC3 Fluid Innovations Inc. - Common Shares	15,712	5,000
30Nov01	Shiff, Marty	IC3 Fluid Innovations Inc. - Common Shares	15,728	5,000
31Dec01	LeClair, Michael	IC3 Fluid Innovations Inc. - Common Shares	79,640	25,000

Trans. Date	Purchaser	Security	Price ($)	Amount
31Dec01	Kaszas, Steve	IC3 Fluid Innovations Inc. - Common Shares	23	15,000
30Nov01	Brown, Grant	IC3 Fluid Innovations Inc. - Common Shares	47,184	15,000
31Dec01	Tucker, Whitman D.	IC3 Fluid Innovations Inc. - Common Shares	15	10,000
05Dec01	Captaur Investments Limited	IC3 Fluid Innovations Inc. - Common Shares	94,452	30,000
06Dec01	Langshur, Eric	IC3 Fluid Innovations Inc. - Common Shares	31,450	10,000
07Dec01	Phippen, Michael	IC3 Fluid Innovations Inc. - Common Shares	15,752	5,000
31Dec01	Shiff, Marty	IC3 Fluid Innovations Inc. - Common Shares	15,928	5,000
03Jan02	6 Purchasers	jaalaM Technologies Inc. - Convertible Debentures	338,231	338,231
08Feb02	The Bank of Nova Scotia	Joseph Littlejohn & Levy Fund IV, L.P. - Capital Commitment	5,896,097	5,896,097
04Jan02	6 Purchasers	Landmark Global Opportunities Fund - Units	392,423	3,756
18Jan02	9 Purchasers	Landmark Global Opportunities Fund - Units	946,559	8,954
14Feb02		Maple NHA Mortgage Trust - Debentures Floating Rate Notes due February 14, 2005	$25,000,000	$250,000
17Dec02 to 04Jan02	13 Purchasers	Mavrix Fund Management Inc. - Common Shares	348,750	232,500
06Feb02 to 13Feb02	Bush, Allan and Prozak, Doug	Mavrix Fund Management Inc. - Common Shares	115,000	76,667
06Feb02	8 Purchasers	MedcomSoft Inc. - Units	1,153,912	1,254,253
08Jan02	Cotyledon Capital Inc.	Neteka Inc. - Convertible Debenture	$250,000	$250,000
31Jan02 to 05Feb02	6 Purchasers	Orbus Life Sciences Inc. - Special Warrants	166,683	222,244
01Feb02	Ontario Teachers's Pension Plan Board	Pacific and General Investments, Inc. - Class O Voting Redeemable Shares	15,907,000	2,609,467
14Feb02	Arpels Financial Services Corp.	Pele Mountain Resources Inc. - Units	51,000	170,000
06Feb02	Transamerica Life Canada	Pioneer Trust C/O Montreal Trust Company of Canada - Secured Notes Due December 15, 2005	$10,000,000	$10,000,000
06Feb02	4 Purchasers	Pure Gold Minerals Inc. - Units	554,000	10,000,000
19Jan01 to 31Dec01	9 Purchasers	Putnam Canadian Global Trusts - Trust Units	245,201,868	9,577,380
11Jan02		Ripplewood Partners II Paralled Fund, L.P. - Limited Partnership Interests	60,644,000	60,644,000
01Jan01 to 31Dec01	6 Purchasers	Sierra Systems Group Inc. - Shares Purchase Options	139,900	26,000
12Feb02	7 Purchasers	South American Gold and Copper Company Limited - Units	537,224	13,023,612

Trans. Date	Purchaser	Security	Price ($)	Amount
08Feb02	5 Purchasers	St Andrew Goldfields Ltd. - Units	600,000	4,000,000
23Jan02	TD Managed Account No. 1	Tanganyika Oil Company Ltd. - Units	125,000	250,000
30Jan02		Thistletown Capital Inc. - Units	205,000	2,050,000
05Feb02	Onbelay Capital Inc.	Tiger North America Inc. - Common Shares	150,000	529
07Feb02	10 Purchasers	Torquest Partners Value Fund, L.P. - Voting Class A Limited Partnership Units, Non-Voting Class A Limited Partnership Units and Class B Limited Partnership Unit	130,000,001	1,301
04Jan02	3 Purchasers	Trident Global Opportunities Fund - Units	145,000	1,362
18Jan02	3 Purchasers	Trident Global Opportunities Fund - Units	148,962	1,396
31Jan02	CIBC World Markets ITF	Vertex Fund - Trust Units	25,000	912
30Jan02	4 Purchasers	ZIM Technologies International Inc. - Special Shares	1,100,000	1,000,000

Resale of Securities - (Form 45-501F2)

Date of Trade	Date of Orig. Purchase	Seller	Security	Price ($)	Amount
05Feb02 to 07Feb02	06Oct99	792523 Ontario Limited	Canmine Resources Corporation -	15,250	40,000

Notice of Intention to Distribute Securities and Accompanying Declaration under Section 2.8 of Multilateral Instrument 45-102 Resale of Securities - Form 45-102F3

Seller	Security	Amount
The Catherine and Maxwell Meighen Foundation	Canadian General Investments, Limited - Common Shares	807,000
The Douglas Quantz Trust	Husky Injection Moulding Systems Ltd. - Common Shares	621,111
Schad Family Trust	Husky Injection Moulding Systems Ltd. - Common Shares	336,363
Wynne-Edwards	Immune Network Ltd. - Common Shares	550,000
Gastle, Susan M. S.	Microbix Biosystems Inc. - Common Shares	235,000
Gastle, William J.	Microbix Biosystems Inc. - Common Shares	495,000
Lead Source Holdings Inc.	Mikotel Networks Inc. -	7,000,000
Northfield Inc.	NFX Gold Inc. - Common Shares	2,500,000
Hawkins, Stanley G.	Tandem Resources Ltd. - Common Shares	2,000,000
The Catherine and Maxwell Meighen Foundation	Third Canadian General Investment Trust Limited - Common Shares	195,800
Kathryn Ketcham Strong	West Fraser Timber Co. Ltd. - Common Shares	25,000

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Chapter 9

Legislation

THERE IS NO MATERIAL FOR THIS CHAPTER

IN THIS ISSUE

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Assante Corporation
Type and Date:
Preliminary Short Form Prospectus dated February 22nd, 2002
Receipt dated February 25th, 2002
Offering Price and Description:
$60,007,500 - 9,450,000 Common Shares issuable upon the exercise of previously issued Special Warrants
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Promoter(s):
-
Project #423447

Issuer Name:
Bombardier Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated February 21st, 2002
Mutual Reliance Review System Receipt dated February 21st, 2002
Offering Price and Description:
$200,000,000 - (8,000,000 Shares) 6.25% Series 4 Cumulative Redeemable Preferred Shares @ $25.00 per Share to yield 6.25% per Annum
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Scotia Capital Inc.
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
Promoter(s):
-
Project #423124

"CORRECTED"
Issuer Name:
The Canada Life Assurance Company
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated February 11th, 2002
Mutual Reliance Review System Receipt dated February 19th, 2002
Offering Price and Description:
$ *
Canada Life Capital Securities - Series A (CLiCS - Series A)
Canada Life Capital Securities - Series B (CLiCS - Series B)
Underwriter(s) or Distributor(s):
Merrill Lynch Canada Inc.
Promoter(s):

Project #422454

"CORRECTED"
Issuer Name:
Canada Life Financial Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated February 11th, 2002
Mutual Reliance Review System Receipt dated February 19th, 2002
Offering Price and Description:
$ * -
Canada Life Capital Securities - Series A (CLiCS - Series A)
Canada Life Capital Securities - Series B (CLiCS Series B)
Underwriter(s) or Distributor(s):
Merrill Lynch Canada Inc.
Promoter(s):
Project #422473

Issuer Name:
Co-Steel Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated February 22nd, 2002
Mutual Reliance Review System Receipt dated February 22nd, 2002
Offering Price and Description:
$50,250,000 - 15,000,000 Common Shares @$3.35 per Common Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
TD Securities Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #423351

Issuer Name:
First Capital Realty Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated February 27th, 2002
Mutual Reliance Review System Receipt dated February 27th, 2002
Offering Price and Description:
Rights to Subscribe for up to 12,301,619 Warrants to Purchase Common Shares at a Price of
$0.05 per Warrant
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #424349

Issuer Name:
Royal Tax Managed Return Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated February 26th, 2002
Mutual Reliance Review System Receipt dated February 27th, 2002
Offering Price and Description:
Series A Units and Series F Units
Underwriter(s) or Distributor(s):
Royal Mutual Funds Inc.
Promoter(s):
RBC Funds Inc.
Project #423963

Issuer Name:
Stantec Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated February 21st, 2002
Mutual Reliance Review System Receipt dated February 21st, 2002
Offering Price and Description:
$16,250,000 - 500,000 Common Shares @$32.50 per Share
Underwriter(s) or Distributor(s):
Sprott Securities Inc.
Dundee Securities Corporation
Acumen Capital Finance Partners Limited
Lightyear Capital Inc.
Promoter(s):
-
Project #423072

Issuer Name:
YM BioSciences Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus dated February 26th, 2002
Mutual Reliance Review System Receipt dated February 26th, 2002
Offering Price and Description:
Minimum of $ *, Maximum of $ *
Class B Preferred Shares, Series I
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Promoter(s):
-
Project #423876

Issuer Name:
Mackenzie Cundill Global Balanced Fund
(Series, C, F, I, O and T Units)
Mackenzie Ivy Global Balanced Fund
(Formerly Mackenzie Universal World Asset Allocation Fund)
(Series A, F, I, O and T Units)
Principal Regulator - Ontario
Type and Date:
Amended and Restated Simplified Prospectus and Annual Information Form dated February 15th, 2002, amending and restating the Simplified Prospectus and Annual Information Form dated December 27th, 2001
Mutual Reliance Review System Receipt dated 26th day of February, 2002
Offering Price and Description:
Offering Series A, F, I and O Units
Underwriter(s) or Distributor(s):
Mackenzie Financial Corporation
Cundill Funds Inc.
Peter Cundill & Associates Ltd.
Promoter(s):
Mackenzie Financial Corporation
Project #403456

Issuer Name:
Mackenzie Cundill Canadian Balanced Fund
(Series C, F, I, O and T Units)
Mackenzie Balanced Fund
Mackenzie Ivy Growth and Income Fund
Mackenzie Universal Canadian Balanced Fund
MAXXUM Pension Fund
(A, F, I, O and T Units)
Principal Regulator - Ontario
Type and Date:
Amended and Restated Simplified Prospectus and Annual Information Form dated February 15th, 2002, amending and restating the Simplified Prospectus and Annual Information Form dated December 18th, 2001
Mutual Reliance Review System Receipt dated 26th day of February, 2002
Offering Price and Description:
Offering Series A, F, I and O Units
Underwriter(s) or Distributor(s):
Mackenzie Financial Corporation
Peter Cundill & Associates Ltd.
Promoter(s):
Mackenzie Financial Corporation
Project #400669

Issuer Name:
THE FRIEDBERG CURRENCY FUND
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated February 20th, 2002 to Prospectus dated October 4th, 2001
Mutual Reliance Review System Receipt dated 26th day of February, 2002
Offering Price and Description:
Daily Subscriptions and Redemptions
Underwriter(s) or Distributor(s):
Friedberg Mercantile Group
Promoter(s):
-
Project #382948

Issuer Name:
The Newport International Equity Fund
The Newport US Equity Fund
The Newport Canadian Equity Fund
The Newport Fixed Income Fund
Principal Regulator - Ontario
Type and Date:
Amended and Restated Simplified Prospectus and Annual Information Form dated February 20th, 2002,
amending and restating the Simplified Prospectus and Annual Information Form dated July 19th, 2001
Mutual Reliance Review System Receipt dated 22nd day of February, 2002
Offering Price and Description:
Mutual Fund Securities Net Asset Value
Underwriter(s) or Distributor(s):
Newport Partners Inc.
Promoter(s):
-
Project #354808 & 416747

Issuer Name:
Acrex Ventures Ltd.
Principal Regulator - British Columbia
Type and Date:
Final Prospectus dated February 22nd, 2002
Mutual Reliance Review System Receipt dated 26th day of February, 2002
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Pacific International Securities Inc.
Promoter(s):
-
Project #403386

Issuer Name:
Canada's Choice Spring Water, Inc.
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated February 19th, 2002
Mutual Reliance Review System Receipt dated 22nd day of February, 2002
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #417308

Issuer Name:
Firm Capital Mortgage Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated February 22nd, 2002
Mutual Reliance Review System Receipt dated 22nd day of February, 2002
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
TD Securities Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
Desjardins Securities Inc.
Dundee Securities Corporation
HSBC Securities (Canada) Inc.
Promoter(s):
-
Project #419547

Issuer Name:
HANOUN MEDICAL INC.
Type and Date:
Final Prospectus dated February 25th, 2002
Receipt dated 26th day of February, 2002
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #417015

Issuer Name:
High Income Principal And Yield Securities Corporation
(formerly, High Income Principal Assured Yield Securities Corporation)
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated February 27th, 2002
Mutual Reliance Review System Receipt dated 27th day of February, 2002
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
HSBC Securities (Canada) Inc.
Yorkton Securities Inc.
Canaccord Capital Corporation
Desjardins Securities Inc.
Dundee Securities Corporation
Raymond James Ltd.
Promoter(s):
Lawrence Asset Management Inc.
Project #411240

Issuer Name:
Infowave Software, Inc.
Principal Regulator - British Columbia
Type and Date:
Final Prospectus dated February 21st, 2002
Mutual Reliance Review System Receipt dated 21st day of February, 2002
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Canaccord Capital Corporation
Promoter(s):
-
Project #414532

Issuer Name:
Miranda Mining Corporation
Principal Regulator - British Columbia
Type and Date:
Final Prospectus dated February 22nd, 2002
Mutual Reliance Review System Receipt dated 25th day of February, 2002
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Salman Partners Inc.
Promoter(s):
-
Project #410698

Issuer Name:
Mulvihill Pro-AMS RSP Split Share Corp.
Principal Regulator - Ontario
Type and Date:
Final Prospectus dated February 26th, 2002
Mutual Reliance Review System Receipt dated 27th day February, 2002
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
National Bank Financial Inc.
HSBC Securities (Canada) Inc.
Desjardins Securities Inc.
Canaccord Capital Corporation
Dundee Securities Corporation
Raymond James Ltd.
Yorkton Securities Inc.
Promoter(s):
Mulvihill Capital Management Inc.
Project #413988

Issuer Name:
Oxbow Equities Corp.
Principal Regulator - Quebec
Type and Date:
Final Prospectus dated February 21st, 2002
Mutual Reliance Review System Receipt dated 21st day of February, 2002
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Thomson Kernaghan & Co. Ltd.
Promoter(s):
Oxbow Equity Advisors 2001 Inc.
Project #416493

Issuer Name:
Bank of Montreal
Principal Regulator - Ontario
Type and Date:
Final Short Form Shelf Prospectus dated February 22nd, 2002
Mutual Reliance Review System Receipt dated 22nd day of February, 2002
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #421583

Issuer Name:
Burntsand Inc.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated February 25th, 2002
Mutual Reliance Review System Receipt dated 25th day of February, 2002
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Raymond James Ltd.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Pacific International Securities Inc.
Promoter(s):
-
Project #421400

Issuer Name:
Canadian Hotel Income Properties Real Estate Investment Trust
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated February 21st, 2002
Mutual Reliance Review System Receipt dated 21st day of February, 2002
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
TD Securities Inc.
Promoter(s):
-
Project #421118

Issuer Name:
CryoCath Technologies Inc.
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated February 21st, 2002
Mutual Reliance Review System Receipt dated 21st day of February, 2002
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Yorkton Securities Inc.
Sprott Securities Inc.
BMO Nesbitt Burns Inc.
Desjardins Securities Inc.
National Bank Financial Inc.
Promoter(s):
-
Project #421080

Issuer Name:
Vincor International Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated February 27th, 2002
Mutual Reliance Review System Receipt dated 27th day of February, 2002
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Merrill Lynch Canada Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
TD Securities Inc.
Raymond James Ltd.
Promoter(s):
-
Project #422329

Issuer Name:
The Newport Yield Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus and Annual Information Form dated February 20th, 2002
Mutual Reliance Review System Receipt dated 22nd day of February, 2002
Offering Price and Description:
Mutual Funds Securities Net Asset Value
Underwriter(s) or Distributor(s):
Newport Partners Inc.
Promoter(s):
Newport Partners Inc.
Project #416747

Issuer Name:
Viscount RSP High Yield U.S. Bond Pool
Viscount RSP U.S. Equity Pool
Viscount RSP International Equity Pool
Viscount RSP U.S. Index Pool
Viscount RSP International Index Pool
Viscount High Yield U.S. Bond Pool
Viscount Canadian Bond Pool
Viscount International Equity Pool
Viscount U.S. Equity Pool
Viscount Canadian Equity Pool
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus and Annual Information Form dated February 20th, 2002
Mutual Reliance Review System Receipt dated 21st day of February, 2002
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #414912

Issuer Name:
MGI Software Corp.
Principal Jurisdiction - Ontario
Type and Date:
Preliminary Short Form Prospectus dated July 6th, 2001
Closed on February 21st, 2002
Offering Price and Description:
$10,000,000 - Rights to Subscribe of up to 25,000,000 Common Shares
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Promoter(s):
-
Project #372725

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Equilibrium Capital Management Inc. Attention: Lidio Mancuso 3266 Yonge Street Suite 1207 Toronto ON M4N 3P6	Limited Market Dealer Investment Counsel & Portfolio Manager	Feb 26/02
New Registration	Morrison, William Glen Attention: William Glen Morrison 150 George Street Unit 1 Toronto ON M5A 2M7	Investment Counsel & Portfolio Manager	Feb 26/02

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Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 - Amendments to By-law 29.27 Regarding Supervision and Compliance - Notice of Commission Approval

AMENDMENT TO IDA BY-LAW 29.27
REGARDING SUPERVISION AND COMPLIANCE

NOTICE OF COMMISSION APPROVAL

Amendments to IDA By-law 29.27 regarding supervision and compliance have been approved by the Ontario Securities Commission. In addition, the Saskatchewan Securities Commission approved, the Alberta Securities Commission did not disapprove and the British Columbia Securities Commission did not object to these amendments. The amendments set out a general statement of the requirements placed on IDA member firms and their supervisors to ensure compliance with all the regulations covering the conduct of their securities and commodity futures business. Furthermore, the amendments include one provision that requires member firms to perform on-site reviews of activities at their branch offices. A copy and description of the amendments were published on November 9, 2001 at (2001) 24 OSCB6801.

One submission was received in response to the request for comments. The comments were made by BMO Nesbitt Burns and were sent by letter dated December 7, 2001. The IDA's summary of the comments received and the response of the IDA is set out below.

SUMMARY OF WRITTEN QUESTIONS AND COMMENTS RECEIVED ON THE PROPOSED REGULATION

Question

Will Members be required to submit all written policies and procedures for approval at the time the by-law is enacted?

Response

Yes, all polices and procedures will need to be approved. However, the Association will only require submission of changes as most Members' policies and procedures are reviewed during the annual Sales Compliance Review and as such will not need to be reviewed for the implementation of the by-law.

Comment

We note that many policies and procedures regarding conduct of a Member firm are not committed to writing. If the purpose of this by-law is to suggest that all such policies and procedures must be in written form, then we disagree with the comment that the proposed rule will not impose any additional costs of compliance. Will the Association be providing any guidance with respect to the matters which require written procedures?

Response

The Association is of the opinion that all policies and procedures designed to ensure compliance with Regulations governing a Members' business should be written. The Association would appreciate some expansion on the statement that some policies and procedures are not committed to writing. It may be that there are areas of exclusively business concern (not regulatory concern) that are subject to unwritten policies and procedures, and we do not mean to require that these be reduced to writing.

Comment

With respect to paragraph (a)(iii), we believe that the words "reasonably designed" should be added after the word "procedures" to be consistent with the other sections of the by-law. We have a similar comment with respect to paragraph (a)(iv) and (a)(vi).

Response

The Association does not disagree with the suggested amendment on "reasonably designed" but would like to point out that paragraph (a) says that the whole system has to be reasonably designated, and therefore the general rubric covers all the sub-paragraphs.

Comment

With respect to paragraph (a)(v), we believe that the term "supervisory personnel" should be defined to clarify whether it refers only to those individuals listed in By-law 38.

Response

It is the position of the Association that paragraph (a)(v) is clear in that the term "supervisory personnel" is meant to apply to all supervisors not just the two specified in By-law 38.

Comment

With respect to paragraph (b), it is our view that a standard of reasonableness should be applied. We also note that as drafted, paragraph (c) does not contain language which makes it clear that a supervisor would be absolved of responsibility for an error by a person to whom functions have been delegated if the supervisor can show that adequate efforts had been made to ensure that that person has otherwise been fulfilling the functions.

Response

In Paragraph (b), the supervisor is required to supervise in accordance with the written policies and procedures, which have to be reasonably designed, etc., and it is the position of the Association that the reasonableness standard flows through. We believe that the same intention is apparent in (c),

in that the only way a person could identify an error by someone they had delegated a function to would be to review absolutely everything they do, which would make delegation meaningless. It may be that we could make this explicit in a notice explaining the By-law, but the Association feels that the intent is plain enough already. As long as the delegator does a reasonable review of what the delegatee does to ensure that a good job is done then the delagator should not be held responsible for errors that the delegatee may make. Furthermore, the delegator would not be responsible for single errors or omissions that the delegatee may make in the ordinary course of performing their duties.

13.1.2 TSE Regulation Services - Continuation of Contested Hearing in the Matter of Laudalino Da Costa

NOTICE TO PUBLIC

SUBJECT: TORONTO STOCK EXCHANGE REGULATION SERVICES

CONTINUATION OF CONTESTED HEARING
IN THE MATTER OF LAUDALINO DA COSTA

TAKE NOTICE that the Hearing of this matter will continue on March 15, 2002, beginning at 10:00 a.m. or as soon thereafter as the Hearing can be held, at the offices of Regulation Services, 130 King Street West, 3rd Floor, Toronto, Ontario. The Hearing is open to the public.

Reference:

Jane P. Ratchford
Chief Counsel
Investigations and Enforcement Division
Toronto Stock Exchange Regulation Services

Telephone: 416-947-4317

Chapter 25

Other Information

THERE IS NO MATERIAL FOR THIS CHAPTER

IN THIS ISSUE

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