

November 1, 2000

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Registrar of Securities, Government of the Northwest Territories
Registrar of Securities, Government of Nunavut
Registrar of Securities, Government of the Yukon Territory

All c/o John Stevenson, Secretary
Ontario Securities Commission
Suite 1900, Box 55,
20 Queen Street West
Toronto, ON M5H 3S8

- and to -

Claude St Pierre, Secretary
Commission des valeurs mobilières du Québec
800 Victoria Square
Stock Exchange Tower, PO Box 246, 22nd Floor
Montréal, Québec H4Z 1G3

Dear Sirs/ Mesdames:

**Re: Proposed National Instrument 54-101 Communications with Beneficial Owners
of Securities of a Reporting Issuer**

We are writing on behalf of the Members of The Investment Funds Institute of Canada ("IFIC") with comments on Proposed National Instrument 54-101 and related instruments ("NI 54-101"). A duplicate copy of this submission, along with a copy stored on diskette, is also enclosed.

We note that NI 54-101 does not contain a provision similar to that contained in Part XIII of existing National Policy 41 which indicates that mutual funds are not required to follow the search procedures that are obviously irrelevant to them. Accordingly, our comments below

are intended to identify those sections of NI 54-101, which we believe should be amended to take into account their irrelevance for mutual fund reporting issuers.

Part 2

Mutual funds are generally not exchange-traded and therefore would not deal with depositories nor obtain information about intermediary positions from them. We believe that Part 2, and in particular section 2.5, needs to reflect that mutual fund reporting issuers will know which intermediaries hold positions in the funds and that they will get beneficial ownership information from those intermediaries.

Specifically, we request that section 2.6 be amended to recognize this and more clearly provide exemptions to reporting issuers that do not deal with depositories. The exemptions in section 2.6 could be refined into three categories:

- i. If there are no depositories identified as registered holders, then the reporting issuer is exempted from clause 2.2(1)(a) and sections 2.3 and 2.5;
- ii. If there are no intermediaries identified as registered holders, the reporting issuer is exempted from sections 2.3 and 2.5 (but not from clause 2.2(1)(a) if there is a depository); and
- iii. If the reporting issuer has all the beneficial ownership information contemplated in the section, it is exempted from sections 2.3 and 2.5.

Transfer Agents

Another way in which mutual funds differ from most reporting issuers is that they do not have transfer agents. Mutual funds are in primary distribution and continuously issue units and redeem units. Funds have registrars that maintain the list of securityholders of the fund and the transactions of securityholders in the fund. Often, the fund's registrar is the same entity as the fund manager and therefore is not a "person or company that carries on the business of a transfer agent" as set out in the definition of "transfer agent". Yet, several sections of NI 54-101, including sections 2.5(4) and 4.1, specifically require that an intermediary providing beneficial ownership information to a reporting issuer must do so through a "transfer agent". Accordingly, we would ask that NI 54-101 clarify that when a communication must be made through a transfer agent, this can be satisfied by mutual funds through the fund registrar.

Requests for NOBO List

We have some concerns with sections 6 and 7 relating to the provision of the NOBO list to any person or company that requests it, even if they sign a declaration regarding the limited use they can make of the list.

Mutual fund reporting issuers are already subject to National Instrument 81-102 (“NI 81-102”), Part 18, which prescribes the securityholder records that a mutual fund must maintain, who can access information from those records and the purposes for which the information can be used.

There is overlap between the requirements of section 6.1 and Part 18 of NI 81-102, and some inconsistency between them. Mutual funds must keep records relating to the registered holders of mutual fund securities. If the registered holder is an intermediary, it is the registered holder information that is provided. Further, the information can be requested by another securityholder of the fund or a representative of the securityholder, not any person or company as under section 6.1 of NI 54-101. Furthermore, the basis for requesting the information and the way it can be used differs under Part 18.

Mutual fund issuers subject to both NI 54-101 and NI 81-102 will have to maintain two separate sets of records and two systems for monitoring and fulfilling requests for information. This could be confusing and costly. We believe that there is adequate provision for the appropriate disclosure to, and use of securityholder information by, other securityholders or their representatives in NI 81-102 and we suggest that section 6.1 of NI 54-101 exclude mutual funds subject to Part 18 of NI 81-102.

In cases where mutual fund reporting issuers have to use the NOBO list to send information to securityholders, section 7.1 could be amended to permit them to do so, notwithstanding the provisions of NI 81-102.

Maintenance of Supplemental Mailing List under NI 54-102

Although the CSA has not asked for additional comments on NI 54-102, we are seeking clarification either in the rule or the Companion Policy to NI 54-102 with respect to the maintenance of the supplemental mailing list. The list must be updated annually in order for the reporting issuer to rely on the exemption from sending interim financial statements under section 2.1. The reporting issuer fulfils this obligation by sending the request form to the registered holder or the beneficial owner. However, under NI 54-101, beneficial owners can opt not to receive certain annual mailings, including annual financial statements and reports. For mutual funds, this is the key annual mailing in which they include the request form to maintain the supplemental mailing list. We would appreciate clarification that it is sufficient to send the request forms in the annual mailing to the intermediaries, as registered holders, in order to fulfil the obligation to update the supplemental mailing list.

Right to Decline Shareholder Materials

NI 54-101 allows securityholders who hold through an intermediary to decline certain shareholder materials, including annual meeting materials which relate to routine business and annual reports and financial statements that are part of those routine annual meeting materials. Our Members question why securityholders who hold positions directly as registered holders

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cannot decline to receive the same shareholder materials as those who hold through an intermediary. We encourage the CSA to consider this issue and whether it would be possible to give all securityholders the option to decline certain shareholder materials.

Conclusion

We appreciate having the opportunity to make these comments. Should you have any questions, please do not hesitate to contact Leslie Byberg, Senior Counsel, Regulation, at (416) 363 2150 extension 473 or by e-mail at lbyberg@ific.ca.

Sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

Hon. Thomas A. Hockin
President and Chief Executive Officer

cc: NI 54-101 Working Group
Regulatory Steering Committee

Enclosure