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Ontario Securities Commission  
20 Queen Street West  
Suite 1903  
Box 155  
Toronto, Ontario  
M5H 3S5

Attn: Mr. John Stevenson  
Secretary

Dear Mr. Stevenson,

**Subject: Proposed OSC Rule 45-501 Exempt Distributions -Pooled Funds**

My Name is Judy Socha.

I work for an Investment Counselor but I am writing you today as a consumer and a client of a pooled fund. I assist my husband in the management of his company. He has over 20 years in the investment industry and has managed \$1.7 billion. He has managed Pension Funds, Segregated Funds, Corporate Funds, Pooled Funds and Mutual Funds.

I have a background in marketing/administration and customer service and I am responsible for the administration and marketing of the company. I am also Bob's consumer barometer. This is very important in today's times, as the investment industry can be very confusing to most people. If I do not understand something then I ask questions until I do understand. I believe in educating people so that they can make a sound decision. I believe in fair disclosure. All of our marketing material is written from this vantage point. In addition, I believe in putting back into the community and as such, do extensive volunteering.

Personally, I do not come from an affluent background, very much to the contrary. I work hard for my money, and now, our money. I am very concerned with the implications that the Proposed Rule 45-501 has on the average person with respect to all types of investment products under this rule. The rule has upset me very much in that the OSC is telling folks how much of their hard earned money can be invested with respect to the investment products under the proposed rule 45-501.

The investment industry used to have a really bad reputation, but thanks to the OSC and other similar organizations who have helped the industry cleaned up its' act. I do very much appreciate the watchdog capacity that the OSC provides.

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The OSC mandate on their website states that: “The OSC is a self-funded, Ontario Crown Corporation, with a mandate to protect investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets in Ontario and confidence in their integrity.”

I strongly stress that assuming that the governing bodies, such as yourselves and others have done their job properly and that the firms/funds and staff are all properly educated/licensed and provide fair and equitable disclosure that consumers will be able to make up their own mind in terms of investing their hard earned savings.

As a consumer, I wish for the commission to strongly consider the following points:

**1. Asset Test vs. Canada Stats:**

Based on 1997 Canadian statistics, over 20+ million people made less than \$100,000.

In 1999, only 38,900 households in Canada had discretionary assets over \$1,000,000 and household income over \$200,000. These statistics clearly indicate that the asset and income tests are too restrictive if less than 1% percent of the total population would qualify.

Based on these statistics consumers fail to see how the commission is changing these products for the good of the average investor. On the contrary, it is felt that under the proposed asset test and income requirements, very few Canadians would be able to enjoy the benefits of a Pooled Fund, Hedge Fund or Private Placement under the proposed rule 45-501. This would reinforce a very elitist and prejudicial attitude towards very wealthy individuals and large corporations and discriminate against the majority of the population along with small businesses in Canada.

As a consumer, this really bothers me. Families with \$1 million/\$5 million of assets or individuals with large income thresholds are smart enough to decide what and how much to invest in. Families with less than \$1 million are not intelligent to make the same decisions. It takes a lot of work to hang onto what the average investor has. Give them some credit. The majority of Canadians don't want to throw it away their hard earned assets and they will not risk it on a poor investment.

**2. Trusts:**

**Family:**

Many families want to set-up trusts as part of their financial planning. Who in the average working class has a trust worth \$5 million in assets? Why shouldn't someone be allowed to invest part of a trust that is set-up for his or her heirs in the funds listed in 45-501?

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**Nonprofit/Charitable:**

I do a lot of volunteer work. It is very important for these organizations to preserve the wealth they have to sustain their activities. The OSC is in essence, through unrealistic and onerous restrictions eliminating these investment products. The nonprofit or charity may not wish/or it may not be prudent to invest in a hedge fund or private placement, but pooled funds are similar to mutual funds. Why are pooled funds deemed to be viewed by the OSC as the riskier investments and therefore have to adhere to the same restrictions as hedge funds and private placements? You can purchase high-risk mutual funds if you so wish.

**3. Businesses**

Canada in general is made up of a large number of small businesses, without them, the economy would suffer greatly. It seems that the proposed rule 45-501 is not providing them with a fair playing field with which to invest. It is OK if they contribute their hard earned time/money/ job generation and ideas, but they aren't able to make good investment decisions because they do not have the \$5million in assets.

If someone is smart enough to run a successful business, surely they are smart enough to decide where they may wish to invest their corporate monies and shouldn't be discriminated against regarding not having \$ 5 million in assets.

**4. What the average consumer wants:**

We want control of where and what products we can invest our hard earned money.

We want lower minimums, much lower. Give us something reasonable we can work with.

We want to invest at a level that **we** are comfortable with.

We may wish to experiment, but without huge minimums, that is our right. We have earned the money, and it is our right to determine how we wish to spend or invest it.

Investment maximums may not be a bad idea on only the extremely high-risk investment products. The OSC has to convince/educate us what is high risk and what is not. We want input into what the maximums should be.

You can lose a great deal of money without regulation in the following types of investment vehicles:

- Regular Stocks
- Penny Stocks
- Lending money to others
- Real Estate
- Casinos, etc.

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Why can't we have the ability to invest \$2,000 in a very high-risk situation? Lower our minimums and let us decide.

We should have the ability to place RRSP's in a professionally managed pooled fund. If the plan is locked-in then they are not typically large accounts, and we can't touch them anyway until retirement age. Locked-in plans should be exempt from the proposed minimums regarding pooled funds.

We want the chance to have our say. Many consumers are saying that the OSC has not done an adequate job on this particular front. In other areas of financial regulation the OSC has done a great job. The proposed rule 45-501 needs to be "sold" to the consumer. As the proposed rule reads right now it won't be sold to the average consumer.

We, the consumer, have had these investment products available to us. Now it is potentially being taken away WITHOUT our say or input. This is particularly bad for those of us that have already invested in these products/funds and do not meet the proposed accredited investor rule.

Until the OSC's revised proposal was issued April 6, consumers really didn't know what to expect or what proposals were being considered. The industry thought that the OSC was going to adopt a policy similar to BC. Existing clients were very happy to hear this. The clients that purchased our fund under the seed capital ruling were looking forward to adding to their accounts. New clients are in fact waiting in the wings to try out our fund with lower capital requirements.

This ruling directly impacts the investment that consumers have or could have made. The OSC should have issued press releases to all of the media on changes that impact the consumer. The press releases need to be simplified and outline the following points:

Purpose

Ramifications both positive and negative

The ability to respond in a reasonable time frame, given that some media publications are produced on an infrequent basis.

The information could have been disseminated via the OSC website in addition to press releases to the media. What it was about, in simple terms, including the ramifications from all angles, the differences in investment types under this rule and in comparison to other categories not under this rule. The proposed rule has not been effectively communicated to the consumers that it impacts. Move to simple terms. It is far less ambiguous to the consumer. As a consumer, it would be wonderful to see these communication tools in place.

Consumers want TO UNDERSTAND! Just communicate effectively.

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**5. OSC feedback/clarification received Or not received:**

I can't emphasize this point enough. "The information needs to be written/spoken in terms that anyone can understand". If the information is communicated properly, then it will minimize the questions and provide more constructive feedback for better decisions to be made.

In relation to 45-501 I contacted the OSC. I wanted to understand from the OSC's perspective what the products were and the level of risk was associated with each investment products before I responded. I am sorry to say that I still haven't been able to obtain a clear understanding of what the definition and risk profile the OSC is utilizing on the following:

Hedge Funds  
Private Placements  
Pooled Funds

This should be standard material on your website. If a comprehensive, but simple chart, of investment types, including these, were on your website, it might clear up a lot of confusion. The information should target the average person and should demystify the differences in easy to understand terms.

What I did receive back from the OSC was not clear-cut. I have been advised, by the OSC, that Pooled Funds:

- Are viewed like mutual funds,
- The main difference is that mutual funds are sold by a prospectus, and therefore protected.
- In the OSC's eyes pooled funds fall under the major heading of mutual funds.
- Some pooled funds can be riskier than other pooled funds, but they haven't advised which ones they are and why.
- But in essence, pooled funds are managed like mutual funds.
- Seasoned professionals do manage pooled funds.
- I felt like I was in a political dance.

**6. Marketing Win-Win:**

As I mentioned earlier, "Consumers want to understand!" Just communicate effectively. Because of the very short timeframe the consumer is totally out of the loop regarding this proposed rule. Unless they are effectively included in the loop the potential for a marketing nightmare is imminent.

I personally don't know enough about Hedge Funds and Private Placements... other than they are high risk and they can make or break you. Maybe it is time to break out all three products into different groupings instead of trying to put all three products under the same rules.

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In the consumer's eyes, there are many mutual funds that are perceived to be risky and they come with higher fees.

The average consumer hasn't a clue what the difference is between a prospectus and an offering memorandum and as such they mean absolutely nothing to many people. It has to be simple and crystal clear.

As consumers, you need to sell/educate us on why on why this ruling is in our best interest. Right now, we don't see it.

Maybe a committee needs to be set up regarding this rule, to determine what represents a fair and equitable win-win for everyone. The committee could consist of:

- Consumers from all income levels.
- Media that present the financial information mainstream to the public.
- Corporate – small, medium and large
- Financial advisors – fee only and other wise
- Accounting firms
- Investment Counselors
- Etc.

I would be more than willing to participate on the committee as a consumer.

### **Conclusions:**

The impact of the proposed rule is far and wide. Personally I strongly oppose the proposed rule as it stands right now. Consumers should have a say in what investment products they wish to invest in and to what extent, after all it is their hard earned money.

The bottom line is this. When mutual funds became popular, many consumers were upset about the lack of clear and fair disclosure. How material is presented to the consumer is very important. As a result, people have a perception that mutual funds have high fees. It is up to the consumer to choose what is best for their situation. I would hate to see the same mistake repeated with respect to:

- Hedge Funds
- Private Placements
- Pooled Funds

If you listen to some of the conference calls of public companies, consumers are listening and asking a lot of questions. There is a subtle movement underfoot.

- They want and are asking for the same research that managers of large pooled/pension/mutual fund manages have available to them.
- They are not totally satisfied consumers.
- What we, are hearing is that they also want the option to have some of their monies managed at lower fees.

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- With the proposed asset/income tests, this will not be possible.
- The public will view this ruling, as a step backwards not forwards.

If the proposed rule goes into effect as is, I can guarantee you that there will be a large number of consumers/existing pooled fund clients that will be dissatisfied. We have spoken with some of our clients and so far none are happy with the proposed rule as it currently reads. They were looking forward to possibly setting up new accounts or adding to existing accounts. Now the OSC is saying they will be frozen. Out of our 23 clients only 3 would qualify as accredited investors!

So long as there is:

Proper Disclosure  
A level Playing Field  
Proper Education  
Controlled Licensing.  
Reasonable minimum investment requirements.

Then let the consumers try what they want. Not all companies may wish to partake in reasonable minimums, and that is their right.

**The consumer deserves a fair and equitable playing field and the right to make up their own minds.**

Thank you very much for your time.

Sincerely,

Judy Socha  
/js

cc: Mr. David Brown, Chair OSC  
Mr. Erez Blumberger, Legal Council Corporate Finance Branch OSC