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BY E-MAIL

Ontario Securities Commission
20 Queen Street West
Suite 1900
Toronto, Ontario
M5H 3S8

Attn: Mr. John Stevenson, Secretary

Dear Sirs:

This letter is in response to your request for comments on proposed Rule 45-501 Exempt Distributions. The views expressed in this letter are my own and do not necessarily represent the views of my firm.

Generally, I am very supportive of the changes and I believe that they are long overdue. The minimum purchase exemption of \$150,000 was a crude way of determining sophistication, especially among high net worth individuals. The proposed amended Rule (the Proposed Rule") generally makes much more sense.

However, I wish to make one comment. This relates to the effect of the Proposed Rule on pooled fund investors. I understand that many investors that have relied upon the \$150,000 exemption would not qualify as accredited investor. The effect of the proposed changes would be to prevent that investor from contributing more to the pooled fund (other than by way of reinvestment of distributions). These investors would typically have looked to the pooled fund manager and its pooled funds as the method that the investor wished to use to manage the investor's savings. It seems very incongruous to suggest that those people that were previously considered sophisticated enough to make this investment are no longer sophisticated enough to continue making this investment. It will be very difficult for these individuals to understand why the Commission is preventing them investing in what they had previously invested in, sometimes for years. It is the norm for the Commission to provide grandfathering provisions where

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persons or companies have arranged their affairs in accordance with the existing regulatory scheme, when that scheme is being changed and those persons or companies would otherwise be prejudiced by the changes. I suggest that the Proposed Rule is such a change.

Moreover, as indicated in the request for comments, the Commission has now mandated Commission staff to review the issues raised by pooled funds with a view to returning to the Commission with a proposed scheme. Presumably it is quite possible that a scheme could be proposed by the staff which would entitle certain investors to invest in pooled funds notwithstanding that they may not be accredited investors (otherwise, what is the point of the review?) The failure to grandfather such investors is, in effect, to prejudge the issue.

Accordingly, I would suggest that investors that have previously invested in a pooled fund as at the date of coming into force of the Proposed Rule, be entitled to be continued to invest in the pooled fund so long as the aggregate cost or net asset value of the investment is at least \$150,000. This grandfathering should have a sunset date that is the date that a new rule relating to pooled funds comes into force (presumably that rule could extend the grandfathering if the Commission considered that appropriate). Because the Proposed Rule considers that it is the investor that has the sophistication, unrelated to the particular size of the investment, I would suggest that under the grandfathering provision, those grandfathered investors be entitled to switch their investments among pooled funds managed by the same manager without regard to the size of the investment in any one fund, provided they maintain the minimum investment in all of the pooled funds in aggregate.

My suggested wording is to add to the definition of "accredited investor":

- (bb) unless and until a rule comes into force dealing with privately offered mutual funds, an investor in an issuer that is a mutual fund which is not offered by way of prospectus, if the investor has, at the date that this Rule comes into force, an investment in one or more mutual funds that are not offered by way of prospectus and which are managed by the manager of the issuer, if the aggregate cost or net asset value of the investor's investment in such mutual funds is at least \$150,000."

I appreciate the opportunity to provide comments. I would be pleased to discuss this issue with members of staff of the Commission at their convenience.

Yours sincerely,



"Paul G. Findlay"

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