June 5, 2002

Via Courier

Canadian Securities Administrators
c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West,
19th Floor, Box 55
Toronto, Ontario
M5H 3S8

Dear Sirs:

Response to CSA Concept Proposal 81-402

Phillips, Hager & North Investment Management Ltd. ("PH&NIM") is registered as an Investment Adviser, in the sub-category of Investment Counsel/Portfolio Manager, ("IC/PM"), managing in excess of $37 billion on behalf of pension plans, endowments & foundations, private clients and its own mutual funds. In 2002, Phillips, Hager & North Investment Funds Ltd. ("PH&NIF") was registered as a Mutual Fund Dealer in order to join the Mutual Fund Dealers Association of Canada. Phillips, Hager & North mutual funds are truly "no-load". There are no sales commissions, front or back-end loads or redemption fees. PH&NIM has been in business since 1964 and currently employs about 300 people in Vancouver, Toronto, Calgary and Victoria (fall 2002).

We are not in agreement with the proposal to establish a governance agency for all mutual funds because, in our view, it will increase regulation in an industry that is already over-regulated and it will cost investors in excess of $66 million for benefits that are not quantifiable.

GENERAL COMMENTS ON THE FIVE PILLARS

1. Registration For Mutual Fund Managers

We agree that mutual fund managers not already registered as Investment Advisers in the sub-categories of IC/PM should be registered. However, we do not agree that Investment Advisers should have to become registered as Fund Managers. Mutual Fund Dealers who are also fund managers should become registered as Fund Managers.

The Investment Adviser IC/PM category of registration requires the highest level of proficiency and is already subject to extensive regulation in areas related to fund management such as the requirement for policies and procedures for all aspects of the management, valuation, control and reporting of mutual fund assets. Therefore, requiring additional registration as Fund Manager for entities already registered

as IC/PM Investment Advisers will result in duplication and over regulation and we note that the CSA has pointed out in its opening comments that it is not interested in simply layering new regulation on top of old.

Our understanding is that while mutual fund managers are not "registered", they are "regulated" under the securities legislation of those provinces that have created a statutory standard of care and conflict of interest provisions. Where such provincial securities legislation exists, it is broadly worded so that persons or companies are deemed to be responsible for the management of a mutual fund if they have the legal power or right to control the mutual fund or if in fact they are able to do so. Fund managers who are not registered are not beyond the purview of securities regulators that have such a provision in their legislation.

In the course of PH&N's internal discussions on the Mutual Fund Governance Concept Proposal we observed that part of the problem may be that the respective roles and functional responsibilities of the Investment Adviser and the Fund Manager have not, traditionally, been well defined. In our own environment, PH&N serves as the Fund Manager as well as the Investment Adviser for the PH&N funds so we do not have the same challenges that separate entities serving in the capacities of Fund Manager and Investment Adviser would have. However, we believe that in order to properly evaluate the proposal, these distinctions must be considered. We also came away with the impression that these distinctions were not clearly set out throughout the proposal document. We raise this issue because if the specific duties and the parties to whom they are owed are not clearly delineated, then there is a potential for regulatory redundancies and misdirected emphasis.

2. Mutual Fund Governance

Option A

We feel that a Governance Agency ("GA") should be optional. If a fund company adopts a GA it should be permitted additional product flexibility in order to deal with conflicts that it may face. If a GA is not adopted, then the existing investment restrictions set out in National Instrument 81-102 should continue to apply.

The investor should have a choice. If the investor wants to invest in a fund company with a GA and incur an additional cost of 16+ basis points per annum, the investor should be allowed to choose to do so. There should be disclosure in the simplified prospectus as to existence of a GA, its responsibilities and the cost.

Option B

An alternative to having a GA would be to enhance the role of a fund's external auditors by requiring them to specifically examine areas where conflicts may arise. External auditors currently opine on certain requirements of National Instrument 81-102. Another alternative would be to expand the role of the Trustee so that it that would review the same areas of potential conflict directly or through the independent auditor.

Other Comments

The CSA notes that there is no independent oversight of the Fund Manager. However, we are of the view that, in certain provinces, such oversight is currently provided by provincial securities regulators as it is for Investment Advisers and Mutual Fund Dealers except that the latter two entities are subject to registration. The introduction of the GA appears to simply shift the responsibility for oversight from independent provincial securities regulators to an independent, possibly less experienced and less well trained, GA. However, there is no concomitant reduction of regulatory authority for the provincial securities regulators. Accordingly, the most effective and simple solution is to create a registration category that can be used for Fund Managers who do not already act in the capacity of Investment Advisers.

In the comparative analysis between the Current Regime and the Proposed Framework the CSA points out that the GA will owe its allegiance to investors. However, we believe it is important to note that the Fund Manager also owes its allegiance to investors, in particular through the statutory standard of care to act in the best interests of the mutual fund which is comprised of the investors of the mutual fund.

The proposed framework changes certain approaches or methods of regulation and rather than add value in the form of added protection to investors, it simply adds a layer of redundant regulation. For example, conflicts of interest are already being effectively regulated, so we do not see the need to change the approach to regulating such conflicts. Also, the introduction of a registration requirement for Fund Managers simply introduces another method of regulating those carrying on this activity and in those provinces that have a statutory standard of care for Fund Managers, the registration requirement will not greatly enhance the ability of securities regulators to deal with Fund Managers. While we do not have a problem with establishing a registration category for persons or entities that are not already registered as Investment Advisers, we do not see an identified policy concern.

3. Streamlined Product Regulation

We are in favour of streamlining product regulation for mutual funds but not at the cost of putting a GA in place. Many firms such as ours have successfully built our businesses under the current restricted product regulations. PH&N has done so with the lowest management expense ratios in the industry. We would rather our investors keep the 16+ basis points per annum in their accounts.

4. & 5. Disclosure and Investor Rights and Regulatory Presence

These aspects should always be there and we will accommodate them.

Underlying Shift in Approach

The CSA states that 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. In our view, investors are purchasing the skill of that fund's Investment Adviser and not the Fund Manager. This appears to be an important distinction that should be considered in the current discourse as there appears to be blurring of the role and responsibilities of the Fund Manager compared with those of the Investment Adviser. In the PH&N model, investors are also investing in our funds because of the skill of the mutual fund salespersons and individual or corporate portfolio managers that provide investors with advice regarding their investments in PH&N funds.

COMMENTS ON EACH OF THE QUESTIONS

It should be noted that this industry is not made up of a group of unethical managers intent on defrauding their clients. There have been few instances of abuse. Therefore, requiring additional regulation in an already well-regulated industry is not considered appropriate.

Q.1 The offer of a "more flexible regulatory approach" is being made at a significant cost in terms of time and money. Adding a registration layer for the role of Fund Manager on top of existing dealer and adviser registrations (we are all three), combined with the soft costs of many more internal person-hours to deal with the oversight of a GA, as well as the hard costs of salaries, travel, insurance and consultants, is an expensive price to pay for "streamlining" regulation.

With respect, the more effective strategy for streamlining regulation and one which would result in the greatest benefit to investors and the industry, would be to seriously focus on regulatory harmonization and reconsider the need for thirteen independent securities regulatory bodies.

Q.2 We would be in favour of a non-regulatory approach coupled with enhanced duties for auditors. As mentioned earlier, this industry has not been plagued by "bad apples". While there have been some inappropriate practices, in relation to the size of the industry, a $66 million a year fix is like hitting a fly with a baseball bat.

We accept that it would be reasonable to require Fund Managers to be registered, but only if they are not already registered as Investment Advisers. Voluntary compliance with best practice guidelines would work with enhanced audit and regulatory review. The objective would be to increase Fund Manager awareness of its responsibilities and best practices to encourage actions in the best interests of investors.

Q.3 Assessing the regulation of labour sponsored investment funds and commodity pools should not be part of this proposal. It is a subject for subsequent consideration.

Q.4 Applying governance to all investment vehicles is also a subject for subsequent consideration. However, we do feel that governance should not apply to pooled funds. Pooled funds are established by Investment Advisers to manage assets in an efficient manner, generally for discretionary clients and sophisticated investors.

Q.5 The regulatory role could be better carried out by reducing the number of regulators and adopting harmonized rules across all jurisdictions. The current structure involves considerable time and paperwork to process registrations and changes of same, and deal with various regulatory issues with no added investor protection.

Q.6 In our view, it is questionable whether oversight by the GA will be effective. The GA will have real powers and real teeth if given such powers and authority but it is questionable whether such power is necessary. We don't believe that such an agency, even with the funding proposed, will add value to investors. We would suggest consulting investors through focus groups to see if they desire the concept proposal. We believe the same results can be achieved while adding value to investors by choosing a more flexible approach – either a non-regulatory approach or one where there is enhanced duties for auditors and regulators.

Q.7 No.

Q.8 Flexibility is preferred to accommodate any business structure issuing mutual fund units.

Q.9 We agree that Stevens' descriptions of potential conflicts may exist but we believe these conflicts can be controlled by enhanced auditor duties and regulator presence.

Since the potential for conflicts arises in all businesses, the objective should be to minimize the potential for conflict and to disclose any conflicts that may exist. To eliminate conflicts is an admirable goal but one must wonder if it is worth $66 million a year to investors when there are already effective regulatory approaches to dealing with such conflicts.

If the requirement to have a GA is imposed, it must be independent and its duties cannot be carried out by an agency made up solely with directors or shareholders of the Fund Manager.

Q.10 We do not agree that owner-operated mutual funds should be permitted to have a non-independent GA if other types of mutual fund are required to have an independent GA. The size of some of these funds is considerable in terms of the number of investors and although the interests of investors and the Fund Manager are more closely aligned than in other structures, there may be specific conflicts of interest between management and investors that could arise in such situations.

Q.11 The number of mutual funds in a family that one GA (if adopted) can handle depends on the number of members of the GA and there should be additional GA members as the number of funds grows. Funds in a related family are common enough to be overseen by one agency. However, if derivatives and exotic investment instruments are employed, the ratio of funds to governors will be impacted.

Guidance on scope of oversight would be helpful but since the liability will rest with the GA, it will have to establish the scope. In this respect, the regulators would have to be careful they are not party to a scope that ultimately may prove inadequate.

Q.12 We have no experience recruiting GA members.

We believe it will be difficult to recruit qualified members at reasonable cost. You cannot go to the market for 500 qualified members without impacting the price, which will also be influenced by the scope of oversight and exposure to liability.

Q.13 The definition of independence makes sense but there should be guidance as to who would not be independent. For example, being a unitholder should not jeopardize independence.

If a GA is adopted, the majority of members should be independent.

All members should not be independent. Having members from fund management who are familiar with operations of the funds ensures more effective and efficient oversight.

Q.14 (a) The GA, if adopted, must have access to Fund Managers but it cannot be unlimited (i.e. at any time). Quarterly dates could be established in advance to allow planning and an appropriate amount of time to deal with salient issues. We do not envisage GA members being in the offices of a Fund Manager on a weekly basis, since it is reasonable to expect that some of the members will have to travel from other cities.

(b) The Board of Directors of the Fund Manager, in carrying out its oversight role over the management group of the Fund Manager and in acting in the best interests of the fund and its investors, is currently, and should continue to be, responsible for ensuring that policies and procedures are in place for key components of the operations of the Fund Manager. The Board of Directors of the Investment Adviser, if a separate entity, would be responsible for ensuring that policies and procedures are in place to deal with the key components of the operations of the Investment Adviser. Where a Fund Manager and Investment Adviser are separate entities, we see that the Fund Manager has a responsibility for ensuring that the Investment Adviser has established sufficient and appropriate policies and procedures relating to it responsibilities as an Investment Adviser. Where both functions are carried out by one entity, the Board of Directors of that entity would be responsible for ensuring that policies and procedures were in place for the Fund Manager activities and for the Investment Adviser activities.

Securities regulators have recently taken an interest in, and provided valuable guidance to, Fund Managers and Investment Advisers to ensure that such policies and procedures are in place and meet certain standards. We do not see that a GA will add anything to this process that cannot be dealt with more effectively and more consistently by securities regulators. A more comprehensive list of policies and procedures by functional area could be developed by securities regulators and the responsibilities for each area could be identified with, or assigned to, either the Fund Manager or the Investment Adviser.

(c) We do not believe that a GA should inform the regulators for all situations where there has been non-compliance with policies and procedures or securities regulations. We must be careful not to establish an environment where the GA provides automatic notice to the regulators in order to protect its members. The GA and the manager should establish what types of non-compliance are material, and agree on those that are to be reported to regulators.

(d) We strongly disagree with the GA approving benchmarks and monitoring performance against the benchmarks. Regulators currently approve benchmarks through the prospectus process. To have the GA monitor performance demands considerable expertise and would probably require the hiring of consultants, as utilized by the pension industry, at additional costs not factored into the CSA Cost Analysis. Performance measurement and presentation guidelines have been established by the professional association for Investment Advisers and should be the direct responsibility of the Investment Adviser.

In any event, Investment Advisers manage assets based on an established investment philosophy or policy and, if they are professionals, these Investment Advisers do not change their investment philosophy to react to the cyclical changes in the marketplace. They "stick to their guns", so to speak, through such relatively poor periods of performance with the view that the investment philosophy is sound and relative performance will recover over time. However, it is quite conceivable that a GA with the responsibility to monitor performance, would raise the issue of under performance with the Fund Manager and put pressure on the Fund Manager to alter or influence the investment decision-making process. In fact, if the GA calls a unitholder meeting over the issue and either initiates a change in manager or unitholder redemptions, it could come at the worst possible time (i.e. the Fund Manager or investment philosophy is changed and performance that the fund would have achieved had such changes not been made, improves). This creates a significant liability for the GA if it is determined that it gave improper direction.

There are cases where an Investment Adviser for a fund has consistently underperformed the market over an extended period of time (7-10 years) and this gives rise to some serious issues but these are related to the quality of investment advisory services and the market will determine how much capital should be allocated to such a fund. There may also be some difficulty in attracting members to serve on the GA of such a long term underperforming fund or fund family.

We believe that in such situations the greater protection for investors is to establish rules would allow investors to redeem their units without redemption fees in instances where there has been underperformance against a benchmark for an extended period of time. That period of time should be defined by the CSA. Seven years would be appropriate.

(e) Members of a GA will not have the expertise to monitor a fund's Investment Advisers and in all likelihood they will retain consultants, similar to the approach taken in the pension industry, at additional cost not forecast in the CSA Cost Analysis.

Items d and e are outside of the expertise and mandate of a GA and will place a considerable burden on Fund Managers, Investment Advisers, GAs and the industry.

(f) These responsibilities should be established by securities regulators. Operating procedures to meet the responsibilities should be established by the Fund Manager and the GA, not the latter in isolation.

(iii) GA members should not set their own compensation. Guidelines should be established by the CSA based upon the investment complexity of the fund family, inherent conflicts, and the number of funds. The CSA could put forward a salary range. The Fund Manager should establish the compensation level required to attract the GA members. We wonder what will happen if candidates demand a considerable salary because of the risks involved in the position. Will fund investors have no option but to pay such salaries?

(g) (i) It is not necessary for GA members to approve the financial statements of the funds. This is responsibility of the Fund Manager. The monitoring of that process is carried out by the auditors when they attest to the fairness of the financial statements. Comprehensive disclosure is already mandated under Canadian generally accepted accounting principles. Although agency members could review financials and ensure they contain useful information from the perspective of investors, the auditors of a fund already report to the unitholders and are responsible for ensuring that such information is made available to unitholders.

(ii) We see no problem in having the GA communicate with auditors of the funds but we would be concerned if the GA took a more direct role and began employing the auditor to carry out the work of the GA.

(iii) Change of auditors should require approval by the GA acting on behalf of unitholders, on the recommendation of the manager who is also acting in the best interests of unitholders in evaluating the level of industry expertise and quality and cost of service provided by the auditors.

(h) The manager's related party transaction policies should be approved and monitored by the GA, if the GA is established.

Mutual fund disclosure documents are sufficiently prescribed and prepared with auditors and lawyers. The GA can review the documents but should not approve.

Q.15 As noted above, the responsibility for review and approval of policies and procedures relating directly to the management of a mutual fund currently rests with the Board of Directors of the Fund Manager in fulfilling its duty to investors and its requirement to comply with securities regulation. Oversight can be carried out by securities regulators. Involving a GA in this process would be a duplication of effort.

In our view, the Fund Manager generally acts in an administrative capacity and would be responsible for overseeing the performance of other companies that provide services to the fund, (that may include a separate entity Investment Adviser), as well as ensuring that the fund's operations comply with securities and other legislation. The Fund Manager would be responsible for office space, equipment, personnel and facilities; provide general accounting, tax and regulatory filing services; and help establish and maintain compliance policies and internal controls.

The Investment Adviser would be directly responsible for:

- Bonding and Insurance
- Code of Ethics for Personal Investing
- Confidentiality
- Insider Information
- Conflicts of Interest
- Derivatives
- Trading Errors
- Trading Practices
- Allocation of Investment Opportunities

- Investment Fund Valuations
- Proxy Voting
- Registration of Advisers
- Performance Measurement Standards and Calculations
- Soft Dollar Standards

With respect to the specific question on derivatives, we believe that the use and control of derivatives would be a responsibility of the management and the Board of Directors of the Investment Adviser. As noted previously, the Fund Manager would only have a role in reviewing and approving the above policy documents if the Investment Adviser services were provided by a separate entity.

Q.16 Acting in the capacity of an audit committee is beyond the scope of a GA. This is clearly a responsibility of the Board of Directors of the Fund Manager.

Q.17 Unlimited liability will hinder recruitment of qualified persons at a reasonable cost and it is not clear if such insurance coverage is available in Canada. We feel the statutory limit of $1 million is suitable and will not compromise the ability of agency members to carry out their duties. Their personal reputations are also at stake, so it is not solely the liability limit driving their behaviour. Corporate directors have different powers to manage a company compared with GA members who would be overseers. Accordingly, GA liability should be limited.

Q.18 Any standard of care statement must be explicit and explain the responsibilities of GA members to enable potential members to assess their personal exposure.

We believe that if a regulatory statement on standard of care imposes fiduciary obligations on GA members it will deter members from accepting such positions.

Q.19 We have no experience with a GA for our mutual funds.

Q.20 The costs of an election by unitholders make it impractical, therefore the initial appointments must be made by the Fund Manager who is better able to identify prospects with the necessary skills.

Subsequent appointments should be made by the manager with prior confirmation by the GA. This is consistent with the approach taken by corporate boards. Again, managers have better access to suitable candidates.

In terms of a practical way to find members, consideration should be given to forming a Fund Governance Association administered by Investment Funds Institute of Canada ("IFIC"). This may involve a requirement that all Fund Managers belong to IFIC. The Fund Governance Association would invite nominations for GA members from Fund Managers and the industry and would solicit applications from qualified potential GA members.

IFIC would maintain a database of candidates from which managers could make selections.

As long as the GA is independent by majority, we do not see a need for the Fund Manager to explain why a member is not independent. A member's status and experience could be disclosed in a fund's Annual Information Form ("AIF").

If investors are as sanguine about the GA as they are with normal fund matters, it should not be necessary to send separate notices of appointments and resignations. Notices should be posted on the manager's web-site and SEDAR. We send our unitholders quarterly reports that could include notices.

Q.21 Fund Managers have a duty to act in the best interests of investors. Therefore, Fund Managers would be required to adhere to this standard of care in appointing GA members. We doubt that investors have an interest in being involved in electing members.

Q.22 Investors should not be allowed to exit without penalty if they do not like the GA members. The GA should not be held to a higher standard than the portfolio management team. Investors are not allowed to exit for free if they are unhappy with the Investment Adviser.

The CSA should provide guidelines for qualifications of prospective members based upon the responsibilities that the CSA defines for GA members.

We have concerns regarding confidentiality if GA members are permitted to sit on multiple fund families and suggest that confidentiality agreements be executed in those circumstances.

Q.23 GA compensation should be subject to Fund Manager approval because the Fund Manager has a better handle on costs and is responsible for expenses of the fund while keeping the best interests of investors in mind. GA compensation must be flexible depending on the complexity of the fund family and the liability assumed.

Some measure of scrutiny could be achieved by requiring GA costs be shown as a note to the fund family financial statements, detailing total GA costs charged to the funds with a breakdown between compensation and other administrative/travel costs.

If the Fund Manager sets the GA compensation directly, we do not feel that the GA's independence will be compromised. In corporations, directors' fees are determined by company management, and the market will ensure that compensation is appropriate.

If the Fund Manager paid GA compensation directly, independence would be compromised. Having unitholders pay for GA would instill accountability to the unitholders. The policy should be that GA compensation is paid out of fund assets, without exception, to avoid independence conflicts.

In terms of giving notice of any proposed increases in GA compensation, materiality must be considered. It is questionable what purpose advance notice would serve for the first GA members' compensation. A forecast range of anticipated compensation should be sufficient.

Q.24 The use of special meetings to resolve disputes between a Fund Manager and a GA does not appear to be a workable solution because of the time and costs of calling such meetings and because unitholders historically do not attend meetings.

The GA has leverage in a dispute because GA members as a whole can resign and can report to regulators.

We believe that a GA can discharge its functions effectively provided that its responsibilities are documented and clear procedures are established to resolve disputes. Consider having legal counsel or auditor input on issues that are in dispute. We agree that granting the GA the power to terminate the Fund Manager is not practical. If one fund in a fund family is performing poorly and the Fund Manager is terminated as a result, how is that fund to be isolated from others within the fund family? Unitholders always have the ability to redeem their fund units if they are unhappy with the Fund Manager.

Filing a press release and amending the prospectus in the event of an unresolved dispute is costly and an extreme course of action not imposed on other reporting issuers (unless there has been a material change).

Q.25 Fund Managers do not have much leverage to remove a non-performing member or GA. As discussed before, special meetings are costly and not well attended. Ultimately, the Fund Manager would consult legal counsel for options which, hopefully, would be detailed in a pre-agreed dispute resolution mechanism established when the GA was formed. Managers should have an opportunity to report to the regulator if GA non-performance is an issue.

The GA should be able to remove fellow members and there should be a maximum term of service for each member subject to re-appointment.

Q.26 We believe the information to be disclosed is too detailed. Currently there is no disclosure of officers or Fund Manager backgrounds in the simplified prospectus. The more relevant information for investors, would include:

- disclosure of the existence of a GA; and
- a description of its role and responsibilities.

Names and backgrounds could appear in the AIF. Compensation and costs should not appear in point of sale disclosure. Rather, this should be in the financial statements as discussed under 14. g (i).

Annual reports as proposed would not be appropriate. Unitholders will not care about the GA's activities, (e.g. who left and who joined). One would expect that a self-assessment of the GA's performance would be generally positive. Anything less might invite an action from unitholders. With respect to the report on unresolved disputes, we would like to know who will write this report and how they will come to agreement on its contents.

Q.27 Three years.

Q.28 The amount of training required will depend on the qualifications required for applicants. Therefore, it is difficult to predict. We would anticipate that the minority manager members would have the necessary training because they are in the business. Independent members may require training but a large part will be "on the job" and a "best practices" guide would be helpful.

Q.29 Provided duplication and regulation costs are kept to a minimum, we support registration of Fund Managers. However, if a firm is already registered as an Investment Adviser, additional registration as a Fund Manager should not be required. Mutual Fund Dealers who are Fund Managers should become registered as Fund Managers.

Fund Managers' registration must be as streamlined as possible with electronic filing and registration in one jurisdiction being suitable for all Canadian jurisdictions.

There are a number of business models in place, therefore, conditions of registration must be flexible enough to fit the different models.

Q.30 We agree that the GA should not be responsible for assessing qualifications and proficiency of senior management. This role is best with the regulators who have established standards and experience with and access to records on many registrants.

The proposal appears to require a Fund Manager to have four senior management positions, a stipulation that doesn't exist in other registration categories and we do not see the justification.

We also assume senior management of the Fund Manager can fulfil similar roles under the company's Investment Adviser or Mutual Fund Dealer registration.

Outside directors should not have to satisfy educational requirements but three years industry related experience is appropriate.

The requirements for officers are acceptable but there must be flexibility by the regulators to allow exceptions for compensating qualifications and prior experience. For example, an officer not having the PDO course but having been a senior officer for over 15 years should be registerable.

Q. 31 We believe that the proposed level of minimum capital will represent a significant barrier to entry into the industry and therefore a detriment to investors.

Capital requirements should not duplicate existing capital requirements for managers that are currently registered as Investment Advisers or Mutual Fund Dealers. The proposed level is significantly above current Investment Adviser and Mutual Fund Dealer requirements, without justification. Until capital requirements of all registration categories can be co-ordinated, Fund Manager minimums should not exceed Investment Adviser requirements.

Q.32 The list of insurable risks is complete.

Q.33 While we appreciate the importance of establishing policies and procedures for the functions indicated, we are surprised at the proposal for an audit of such internal controls. As proposed, this policy would be costly, especially for smaller managers and a barrier to entry. We suggest a certification from the Fund Manager of the existence of policies and procedures for the functions. Regulators can then review compliance with the policies and procedures as part of their review.

Q.34 We have found a Section 5900 audit report to be of nominal value other than the comfort of a major audit firm's signature. To insist on such an audit by third parties may reduce selection of available suppliers.

Q.35 No.

Q.36 We believe product restructuring should be developed together with the fund governance proposal as part of the package, not as "sometime later", because historically it has taken years to get to the issues left for later. Specifically, we do not have issues with the restrictions in 3.1(a) i, which appear to be concerns of banks and large institutions.

With respect to the restrictions in 3.1 (b), we would like to see the concentration and fund of funds investments relaxed.

As outlined at the beginning of our response, registrants who have had issues with the various restrictions should be required to have a GA in order to get relief from the restrictions. Registrants who do not have conflicts, etc. should be able to opt out of the governance regime and continue under the current 81-102 restrictions, with some amendments for concentration and fund of funds.

Q.37 While one approach to dealing with conflict of interest rules would be to have a GA review the Fund Manager's policies in this area, we do not have a problem with the current rules in this area and, therefore, question why a change in approach to regulation is necessary. It may result in less consistency in application and may, in fact, result in less simplicity because of the lack of a standard set of rules.

Q.38 We would recommend that investors be able to approve a proposed change to a new, unaffiliated management company. If there is a change in control of a manager, but the manager remains in place after the change, we do not support approval being required.

Q.39 We do not feel the benefits outweigh the costs associated with the proposed structure.

The estimated costs do not provide for the use of consultants and the cost of insurance has not been adequately researched.

While 16 basis points may not seem large on a fund with an MER of 250 bps (resulting in a cost increase of 6%), we wish to point out that our fixed income fund MER's are about 60 bps so 16 bps would result in a 26% cost increase. On our equity funds, MER's are about 120 bps, which would result in a 13% cost increase. These cost increases to our unitholders cannot justify the benefits proposed and we would forecast that if we gave them an opportunity to choose, they would decline the governance agency.

While we are not in agreement with the proposal to require a governance agency for all mutual funds, we sincerely appreciate the work that has gone into developing the discussion document and the opportunity for interested parties such as PH&NIM to provide you with our views on the matter. We would be pleased to discuss our response at your convenience. Please contact the writer directly by email to dpanchuk@phn.com.

Yours truly,

Phillips, Hager & North Investment Management Ltd.

Don S. Panchuk, CA
Vice President Administration & Regulatory Matters
and Secretary

DSP:dgs