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Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Securities Registry, Government of the Northwest Territories
Registrar of Securities, Government of the Yukon Territory

All c/o John Stevenson, Secretary
Ontario Securities Commission
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Toronto, ON M5H 3S8

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and to –

Denise Brousseau, Secretary
Commission des valeurs mobilieres du Quebec
800 Victoria Square
Stock Exchange Tower, P.O. Box 246, 22nd Floor
Montreal, Quebec H4Z 1G3

Consultation-en-cours@cvmq.com

Dear Sirs/Mesdames:

Re: Request for Comments on Proposed National Instrument 81-402 Released March 1, 2002

On March 1, 2002, the Canadian Securities Administrators ("CSA") released proposed National Instrument 81-402 entitled "Striking a New Balance: A Framework for Regulating Mutual Funds and their Managers" (the "Concept Proposal"). AGF Management Limited, on behalf of itself and its other registrants, including AGF Funds Inc. ("AGF") has reviewed the Concept Proposal and has provided comments and responses to questions posed by the CSA in the Concept Proposal.

As an IFIC Member, AGF supports the submissions made by IFIC. Additionally, we have responded to many of the issues raised by the CSA in the Concept Proposal and present our comments to the CSA for its consideration.

General

AGF commends the CSA for issuing the Concept Proposal and supports this initiative to renew the governance framework. We agree with the general thesis of the CSA where it is stated "it is important to understand the goals of the fund governance and where they fit within the broader context of mutual fund regulation." (pg. 2, Concept Proposal) however, we have two additional themes we wish to comment on.

We acknowledge the five pillars for regulating mutual funds as set out in Part A of the Concept Proposal. While we understand that the paper addresses in large part the first two pillars, namely, registration for mutual fund managers, and mutual fund governance, we urge the CSA to develop and adopt new rules relating to product regulation. We believe that the fundamental changes that are being proposed by way of governance must not occur without a corresponding review and set of proposed changes to product regulation surrounding mutual funds. Such changes should be introduced concurrently with the proposed changes to the governance regime.

It is very important that similar products be regulated in a similar fashion; a point which is accepted by the CSA in its Concept Proposal. As mutual fund regulation has evolved over the years, several problems have emerged and while some of the problems have been resolved, others remain. Thus, it is incumbent on the CSA to reduce on-going regulatory burdens and to craft a well-conceived, comprehensive package for the entire industry.

A second concern relates to costs. The CSA must be cognizant of the costs of regulation and the enhanced regulatory burden that could be placed on a fund complex if the proposed changes result in significantly higher operating costs. For example, if registration with minimum capital requirements is introduced, or if the scope of duties of the governance agency are so large so as to result in an unacceptable level of risk to the directors of the agency, then there will be players within the industry who choose not to, or may not be able to, continue to compete. This should not be an acceptable outcome for the CSA.

Proposed Framework and Alternatives (Issues 1 & 2)

Of the proposed frameworks suggested, we support Alternative #1 which promotes a non-regulatory approach to fund governance. IFIC is an appropriate body to devise a set of industry guidelines of best practices for fund governance. The non-regulatory approach requires disclosure of a fund's governance regime in a manner consistent with the TSX guidelines for reporting issuers on a publicly traded exchange. This disclosure is updated annually and the market and investor would then adjust to reflect the voluntary adherence to these guidelines by fund managers. In addition, this governance model is cost effective.

We accept however that there may be different standards of disclosure resulting in difficulty of comparison between fund managers. This could lead to greater confusion for the investor. However, we believe that generally, disclosure has been clear among publicly traded companies who have adopted the TSX voluntary guidelines. In addition, it is expected that most if not all fund managers would voluntarily comply with defined fund governance guidelines. There is a real risk not to comply voluntarily in today's market place and not to be clear in defining one's governance model. The mutual fund industry itself has demonstrated initiative in self regulation, and we believe that by supporting a non-regulatory approach to fund governance, a cost-effective solution can be found, while leveraging off a well-established, accepted and known disclosure regime.

However, with respect to the proposal for fund governance as set out in the Concept Proposal, we believe that there is a need for greater clarity on the scope of the Governance Agency ("GA"), its role and the role of its members. We believe that the GA should not be charged with the duty of supervising the functions of a mutual fund manager, but rather should be the agency resolving conflicts of interest between the manager

and the fund, and questioning and resolving issues surrounding process and procedures of the manager. The proposed framework should provide a clearly defined scope of duties, not too dissimilar than the process followed by a publicly listed company.

Proposed Framework and Regulation of Investment Products (Issues 3, 4 & 5)

We agree that similar products must be regulated in a similar way. Generally, we believe that any vehicle in which an investor has some participation in a block of securities requires some form of governance. Specifically, we would ideally see commodity pools, Labour Sponsored Investment Funds and segregated funds covered by similar regulation.

Mutual Fund Governance (Issues 6 & 7)

We believe that the framework is consistent with the stated objectives. The approach of fund governance will add perceived value to investors, however, the powers of the GA will need to be clearly defined in order to balance the objective of real power, the interests of unitholders, and the ability of the fund manager to manage the fund.

Depending on the size and depth of the organization, we believe a flexible approach to fund governance is preferable. The flexible approach allows the GA to develop its own responsibilities and procedures so long as the basic governance principles established by the CSA are followed. It further permits smaller players to work within the regime without undue costs.

Governance Principles (Issues 11, 12 & 13)

We do not believe there is any practical limit to the number of mutual funds that can be overseen by one GA. This will depend on the size of the Board, its composition, quality of compliance, quality of reporting from management and the format of the information presented. Depending on the scope of duties of directors, members of a GA should be able to oversee all mutual funds within a family of funds.

Provided responsibilities and potential liabilities are not greater than on a corporate board, we do not believe that there should be difficulties in recruiting qualified GA members. We believe there should be consistency in the definition of "independent member" and therefore, suggest that the TSX corporate governance guidelines and other regulatory references be reviewed. We do further suggest that the governance agency ought to include members from management of the manager in order to be an effective agency.

Responsibilities of the Governance Agency (Issues 14, 15 & 16)

We envision the role of the GA to include resolution of conflict issues between the manager and the fund, and the inquiry into the manager implementation and adherence to policies, including for example, policies relating to derivatives or securities lending. However the GA should not be responsible for the setting of such policy or procedures related therein. We believe that other governance functions can be adopted, as appropriate, from the TSX guidelines on corporate governance in order to ensure similarity of GA function in relation to the role of a board member for corporate mutual funds.

We believe the audit committee should be comprised of independent members, with at least one member who has financial expertise.

Limits on Liability of the Governance Agency (Issues 17, 18 & 19)

We believe that it would be advantageous in attracting new directors to have "limitation of liability" defined in the National Instrument. Although this would present inconsistencies with current law for directors of mutual fund corporations, a legislated "limitation" will be the only way to provide adequate comfort of risk management to a prospective GA member.

Depending on how the scope of the role and duties of the GA is defined, we do not believe that mutual funds should find it too difficult in attracting qualified members. Again, if the risk of liability is much greater than in a corporate board setting, this will impact on one's ability to attract good GA members at a reasonable cost to the funds.

Appointment of Governance Agency (Issues 20, 21 & 22)

We believe that the first set of members should be appointed. Upon their vacancies, the members of the governance agency should appoint replacement members. Further, we envision a compensation or nominating committee of the GA be established which would be charged with the duty of evaluating other members' performance and setting compensation for its members. The chair of this committee should be independent.

The fund manager should be obligated to update the slate of members only annually, in the annual renewal of the prospectus and AIF. It is not reasonable to require disclosure immediately if a member resigns unless in extraordinary circumstances, such as more than one member resigning over a policy or dispute with the manager.

With respect to the CSA providing guidelines on qualifications of prospective members, it should not be necessary, as any good fund manager would look to ensure that the skills represented on a GA are sufficiently broad. However, if the CSA wishes to provide suggestions on the type of qualifications that would be of value, they should be presented strictly as a guideline, rather than a rule.

We do not support any financial incentive, for example, by allowing free redemptions, in circumstances where a unitholder is dissatisfied with a GA member appointment. Each unitholder will have full disclosure regarding the GA members in advance of making a purchase, and there is risk that a financial incentive in certain circumstances could be abused.

Compensation of the Governance Agency Members (Issue 23)

As mentioned above, we envision a nominating committee comprised of members of the GA fulfilling a number of roles, including reviewing and setting of compensation for members. The chair of this sub-committee should be an independent member. The industry or the CSA should also provide guidelines about appropriate compensation levels to ensure reasonable pricing within all fund complexes.

In addition, we do not support the requirement to provide advance notice of any increase in members' compensation to unitholders.

Dispute Resolution (Issue 24)

GA members should have the ability to hire outside advisors when required. The GA should not have the right to terminate the manager as we believe this would not be in the best interests of unitholders and would leave unitholders unprotected. Practically speaking, the GA would not have access to the information required to call a meeting. Furthermore, if an issue is so serious as to warrant the unitholders attention in this manner, the GA members' first choice of recourse would be to the regulator. Alternatively, GA

members would resign, which in the face of a mass registration, the manager should be required to disclose immediately to all unitholders.

Non-Performing Governance Agency Members (Issue 25)

The nominating sub-committee of the GA should be responsible for reviewing and assessing the members' performance annually. Any underperforming members should be terminated by a decision of the GA.

Reporting to Investors (Issue 26)

As a suggestion, consideration may be given to the reporting guidelines provided by OSFI in respect of the regulation of financial institutions. These guidelines are comprehensive and provide valuable information on the organization. However, they are also onerous and time-consuming to complete which may outweigh their benefit.

Implementation of Governance Agency (Issue 27 & 28)

Fund managers should be allowed a minimum three year period to develop their governance agencies, particularly for organizations that do not have any structure currently in place. We believe the transition should be required to ensure that all parties move toward a level playing field as quickly as possible.

We do not think industry training programs for new or prospective GA members are necessary. It is not practical to expect members or prospective members of a mutual fund GA to take proficiency exams. Rather, most prospective members would have a set of skills or qualifications that are required by the GA when invited to join the GA.

Registration of Mutual Fund Managers (Issues 29 & 30)

We support the IFIC comment letter on registration for mutual fund managers. In addition, consideration must be given to the costs of requiring registration of managers across all Provinces. We would expect that if a registration system were introduced, it would be part of a national registration system to reduce unnecessary regulatory burdens. In addition, we agree that the CSA should develop registration standards for fund managers.

Implementation of Internal Controls, Systems and Procedures (Issues 33, 34 & 35)

In our experience, 5900 reports are effective tools when interpreted and read by a qualified party. Typically, 5900 reports are interpreted by auditors when conducting audit reviews. GA members, however, may not have the qualifications to interpret the 5900 reports. In addition, 5900 reports are not standardized and therefore, may provide different information depending upon the direction given for review. Therefore, we suggest that 5900 reports should be received by auditors who present them to the GA or its audit committee.

With respect to internal controls and their review, IFIC could assist in devising industry best practise guidelines not unlike the OSFI reporting guidelines. The fund manager's respective external or internal auditors could review and advise the GA members. Without some framework within which the auditor's review of internal controls would take place, the costs of conducting such a review would be prohibitive.

Conclusion

We appreciate the opportunity to comment on the Concept Proposal and we appreciate CSA considering our submissions. Should you wish to discuss these comments, please feel free to contact the undersigned.

Yours very truly,

"Original Signed by Judy G. Goldring"

Judy G. Goldring
General Counsel and
SVP, Business Operations