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June 7, 2002

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, ON M5H 3S8

and

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

Dear Sirs/Mesdames:

Re: Concept Proposal 81-402 – Striking a New Balance: A Framework for Regulating Mutual Funds and their Managers

We are writing in response to your request for comments regarding Concept Proposal 81-402 entitled *Striking a New Balance: A Framework for Regulating Mutual Funds and their Managers* (the "Proposal").

While we are supportive of the CSA's initiative to enhance investor protection, the Proposal has been drafted very broadly and provides only an overview of the proposed regulatory framework. As a result, we have found it difficult to respond to the questions that have been raised for industry comment, especially given that such questions require us to consider individual aspects of the Proposal in isolation, without a detailed understanding of the whole regulatory framework. We are therefore providing comments of a more general nature on what we perceive to be some of the more fundamental issues.

Re-evaluation of regulatory restrictions

The CSA has indicated in the Proposal that it will re-evaluate existing regulatory restrictions after implementation of a new governance regime. We agree with IFIC's comments in this regard: we cannot support this initiative without a concurrent relaxation of the regulatory restrictions that a system of fund governance would render moot or redundant.

Role of Governance Agency and Liability

The Proposal does not clearly define the roles and responsibilities of a governance agency, nor the liabilities of governance agency members. A full understanding of these matters is essential before we can provide meaningful comments on many of the questions raised by the CSA. For example, we cannot assess whether there is a practical limit to the number of funds a governance agency can oversee, nor can we properly assess the difficulty of recruiting qualified members at a reasonable cost, without a clear

understanding of the role and responsibilities of agency members and the liability to which they will be exposed.

While the CSA has stated that the role of the governance agency will be to oversee rather than micro-manage the day-to-day operation of the funds, some of the specific responsibilities enumerated fall within the latter scope. For example, "monitoring" mutual funds to ensure that they are managed according to their stated investment objectives and strategies necessitates a great deal of involvement and investment management expertise. The same is true with respect to approving benchmarks and monitoring fund performance against those benchmarks. Moreover, we do not believe that governance agencies should be required to act as an audit committee and approve financial statements, but rather to receive and review the financial statements to ensure that the disclosure is meaningful to investors. To the extent that the governance agency is asked to take on these types of responsibilities and members have personal liability, we are concerned that governance agencies will find it necessary to seek expert advice (such as legal and audit) resulting in an increase in costs to the mutual funds.

From the perspective of one of Altamira's Advisory Council members, by including among the ten governance principles references to the governance agency's role being both to oversee and to supervise, the CSA is sending a very mixed message in terms of the fundamental role of the agency. Oversight is the appropriate level for such a body, whereas supervision is part of management's role.

With respect to liability, we believe that there should be a statutory limit on the liability of governance agency members. Qualified members may not wish to be a part of a governance agency if liability were unlimited and the cost of recruiting those willing to act would almost certainly be higher. We agree with IFIC and: (i) do not believe that such a limit would undermine the stated purpose for governance agencies or otherwise be contrary to the public interest; (ii) believe that personal liability of up to $1,000,000 is more than adequate incentive for members to carry out their function diligently; and (iii) do not believe that the absence of such a limit in the corporate context is relevant given the fundamental differences in the roles of boards of directors and governance agencies.

Appointment of governance agency members and Compensation

We believe that the issues associated with fund managers appointing governance agency members are theoretical. The governance agencies' accountability to investors is derived from its standard of care and liability rather than the appointment process. In addition, given the costs and logistical issues associated with unitholder meetings, we do not think it is appropriate for unitholders to elect governance agency members. With respect to filling vacancies, we believe that the fund manager is in a better position to identify suitable candidates but would not be opposed to a ratification process by the governance agency.

We believe that setting governance agency member's compensation should be in the sole discretion of the fund manager. We do not believe that the independence of governance agency members would be compromised if the manager sets the compensation – as discussed above, members will have a statutory standard of care to unitholders coupled with personal liability, which together will be adequate incentive for members to fulfil their role diligently.

We also wish to note that the compensation should be paid exclusively by the fund and should be exclusively cash compensation. Allowing the manager to pay compensation could drive the industry benchmark compensation higher as larger complexes would be in a position to offer larger salaries. In addition, larger fund companies could provide additional compensation by way of stock options. A financial interest in the fund manager could potentially offset liability issues and compromise the independence of governance agency members. At a minimum, the perception of lack of independence could exist.

Dispute Resolution

We do not believe that unitholder meetings are a practical means for the manager to dispute compensation it believes to be unreasonable – in fact, we do not believe that unitholder meetings are a practical means for any dispute resolution. We urge the CSA to remember that the cost of such meetings is ultimately borne by the unitholders and in our experience unitholder attendance at meetings is incredibly low (often 4 or 5 unitholders). Given this apparent apathy on the part of unitholders, we have serious doubts about the efficacy of taking matters to unitholder meetings and, moreover, the desire of unitholders to have issues brought to them.

Manager Registration

We agree with IFIC's comments with respect to manager registration and do not understand what benefits the CSA hopes to achieve by requiring manager registration. Mutual fund managers are already subject to a standard of care under securities legislation and given that they are "market participants", they are already subject to CSA oversight. We believe that uniformity of standards across Canada is more properly addressed through regulatory harmonization rather than an additional layer of registration.

To the extent that a system of manager registration is adopted, we are of the strong view that such registration should be required with one principal regulator and not with 13 regulators across Canada. We are concerned about the costs associated with duplicative registrations and the increasing regulatory burden on our industry.

Minimum Capital Requirements

We agree with IFIC's comments with respect to minimum capital requirements and do not understand why the CSA feels minimum capital requirements are necessary for investor protection.

To the extent the CSA imposes minimum capital requirements, we do not believe that such requirements should be calculated on the basis of assets under management for the reasons outlined in IFIC's overview submission.

We thank you for the opportunity to comment on the Proposal.

Yours truly,

(signed) Christopher J. Hodgson

Christopher J. Hodgson
Managing Director

-and-

(signed) Jacqueline Gardner

Jacqueline Gardner
Legal Counsel