Fogler, Rubinoff LLP
Suite 4400, P.O. Box 95, Royal Trust Tower
Toronto-Dominion Centre
Toronto, Ontario, Canada M5K 1G8
Telephone: 416-864-9700 Fax: 416-941-8852
www. foglerubinoff.com

FOGLER, RUBINOFF
BARRISTERS & SOLICITORS

Reply To: Gary M. Litwack
Direct Dial: 416-941-8815
E-mail: gml@foglerubinoff.com

June 7, 2002

File No. 02/1137

**TRANSMITTED VIA E-MAIL**
**<u>& DELIVERED VIA COURIER</u>**

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of The Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Securities Registrar, Government of the Northwest Territories
Registrar of Securities, Government of the Yukon Territory
Registrar of Securities, Government of Nunavut

**<u>c/o John Stevenson, Secretary</u>**
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario
M5H 3S8

- and -

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

Dear Sirs/Mesdames

**<u>Re: Concept Proposal 81-402 - Framework for Regulating Mutual Funds and their Managers</u>**

In response to the request for comments set out on page 4 thereof, we are submitting the following comments in respect of Concept Proposal 81-402 (Striking a New Balance: A Framework for

Regulating Mutual Funds and their Managers) (the "**Concept Proposal**") in our capacity as counsel to Friedberg Mercantile Group ("**FMG**").

FMG has only asked us to comment on one aspect of the Concept Proposal, being paragraphs 2 and 3 of section 1.2 of the Concept Proposal. These paragraphs deal with the size of the governance agency for a mutual fund family and the requirement that a majority of the governance agency members be independent.

As has been noted in a number of the comment letters on the Concept Proposal which we have reviewed (including the comment letters of the Investment Funds Institute of Canada and Mawer Investment Management), the expenses inherent in maintaining a governance agency with at least two independent members will be significant in the context of smaller fund managers. In the context of managers with one fund or a family of funds with relatively fewer assets under management, the Concept Proposal would require such managers to select between two undesirable choices, being (i) to pass on some or all of the additional costs to the funds (as permitted by paragraph 8 of section 1.2 of the Concept Proposal), which would have a more significant impact on expense ratios and returns to investors than in the context of larger funds and fund families or (ii) to themselves incur some or all of the expenses of the governance agency, which in the context of a smaller company could have a significant adverse impact on their operations. We and FMG have noted that a number of commenters (in various forms and with various thrusts, the comments of Mawer Investment Management, the Investment Funds Institute of Canada and Jim Baillie) have expressed concern as to the imbalance of the impact of these requirements and/or the very high cost to benefit ratio which would result.

Reflective of the foregoing, FMG has requested that we convey their concerns with respect to the impact on the governance agency membership requirements (which will, of course, be evident from the preceding portions of this letter). Rather than simply expressing such concerns, FMG has also asked that we put forward two possible proposals which could assist in addressing imbalances in the impact of these requirements between smaller firms and larger firms. As is the case with the various provisions of the Concept Proposal, the recommendations set out below are in the nature of "suggestions for consideration" rather than detailed and codified solutions. The proposals are as follows:

1. Although various logistical and practical issues (such as confidentiality) would have to be addressed, one possible avenue would be to specifically recognize and assist smaller mutual fund companies to effectively "co-op" the independent governance agency function, such that a group of independent individuals could serve as the independent membership component for the governance agencies for various fund groups. In this way, the economies of scale could be such that the relative costs to the managers and/or the individual fund groups could become much more comparable to the relative ratio of expenses to assets under management of the larger fund groups. Were this proposal to be considered favourable, we would expect that organizations such as the Investment Funds Institute of Canada or the Mutual Fund

Dealers Association could play a pivotal role in assisting in arranging for eligible candidates and preferred rates for insurance.

2. It is suggested that the requirement for a governance agency comprised of at least three members and/or the requirement for majority independent membership could be modified somewhat for smaller fund groups. Under this proposal, a fund group with less than $500 million in assets under management could, for example, be permitted to have the governance agency comprised of only one member (with such member to be independent) or, in the alternative, the requirement for majority of independent members could be altered such that, while there would be no requirement for a majority of members of the governance agency to be independent, the governance agency could not take or refrain from taking any action which was inconsistent with the views of the independent governance agency member. In effect, a single independent member of a governance agency could control the governance agency in the same way that a majority of independent agency members could control a governance agency for larger fund groups.

Both we and FMG hope that the foregoing comments and suggestions will be of assistance to the Canadian Securities Administrators and would be pleased to respond to any questions which you may have, whether arising as a result of the foregoing or otherwise. In addition, although we recognize that the deadline for submission of comments is today, we and FMG will review the various comments submitted once available and will continue to discuss and pursue other potential means to address the foregoing concerns with a view to providing any additional suggestions of potential merit which may come to our attention.

Yours truly

**FOGLER, RUBINOFF LLP**

Gary M. Litwack

GML/hp

*cc. Enrique Z. Fenig, Friedberg Mercantile Group*

K:\GLITWACK\WpData\Friedberg Mercantile Group\2002 General\2002\Letters\CP-81-402.wpd