LEITH WHEELER
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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

By E-mail: jstevenson@osc.gov.on.ca

And

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

By E-mail: consultation-en-cour@cvmq.com

Dear Madam and Sir:

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

Firstly, we wish to thank you for the opportunity to voice our opinion regarding your new Concept Proposal. The balance between investor protection needs and practical realities of operating in the investment industry is an important job and we admire your constant vigilance in this matter.

Due to the length of the Concept Proposal and in the interest of saving time, we focused our comments on those issues which may significantly impact our Firm and our clients. In addition, we thought it would be helpful to provide a brief background on our Firm in order to shed light on our perspective.

WHO IS LEITH WHEELER?

Leith Wheeler Investment Counsel Ltd. is registered as Portfolio Manager in the Province of BC and holds equivalent licensing in Alberta, Saskatchewan, Manitoba, Yukon, Ontario, New Brunswick, Quebec and Nova Scotia. We are also licensed as Mutual Fund Dealers in BC and as a Limited Market Dealer in Ontario. The firm manages in excess of $3 billion of client assets in segregated and mutual/pooled funds ranging from individual mutual fund investors to large corporate and union pension funds. Our Family of No-Load Mutual Funds was mainly developed to service our discretionary institutional investors and discretionary high-net-worth clients with a small percentage of retail clients. We service all our clients personally using licensed Portfolio Managers.

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REGULATIONS/GENERAL COMMENTS:

As a general rule, one set of rules can not fit all registrants. As an industry practitioner, we feel a great deal of time and money is spent on developing new rules and associations to act as a "stop gap measure" for specific problems in the mutual fund industry. We believe the first step to revamping the mutual fund regulatory industry is to first identify the areas of concern and risk areas and then to develop rules with "teeth" to deal with intentional violators. The major problem area seems to be in the distribution side whereby brokers/mutual fund dealers push third-party funds with higher trailer fees or special bonuses. Disclosure is a powerful tool. If mutual fund participants are required to disclose all the monetary benefits and other perks they received from fund companies, this may discourage unethical practices.

We are encouraged that the CSA recognizes that owner-operated mutual funds do not raise the same conflict of interest concerns as other mutual funds sponsored by publicly-held financial institutions. We agree that current prescriptive requirements for such issues as conflicts of interest and sales practices should be replaced by a well-developed code of conduct and principles. Conflicts of interest must be carefully analyzed with respect to the different types of market participants performing fund management duties. In our minds, there are two types of mutual fund managers. Namely, there are those who are sponsored/employed by financial institutions who underwrite securities and pursue other activities where a conflict may arise between the financial institution and the investor; and there are fund managers who are independent of the companies they invest in and whose interests are aligned with the investor and who serve as portfolio managers and distributors of those funds only. Rules developed to deal with conflicts of interest and fund governance for a financial institution fund manager should not be the same as those developed for independent fund managers who manage a family of Investment Funds and distribute their own products only. Having a voluntary set of best practices guidelines is an ideal concept, but would not be useful in monitoring violators. Enhancing the duties of the auditor or regulator can be an effective tool if these groups are equipped with the knowledge and the power to carry out the stated objectives. Often times, those who audit or monitor our industry require deeper understanding of how conflicts arise and how the system can be circumvented. Furthermore, we require a stringent monitoring and penalty system that focuses on high-risk registrants and penalizes intentional violators.

In addition, we do not support having another "SRO" type association to regulate the Mutual fund industry. As an independent privately-owned mutual fund manager, we feel our interests are aligned with our clients and do not need to be regulated as extensively as other mutual funds sponsored by financial institutions. In many cases, the mutual fund related fees are charged back to the funds and ultimately to the clients. Our Firm does not expense such fees in our Funds. We are hesitant to face additional paper work and bear the costs when other fund managers simply pass on these costs. The rules need to be flexible and broad enough to address the diversities that exist in our industry. Certainly, new costs will be generated, but these costs should be borne by those who create the need for such additional rules.

MUTUAL FUND GOVERANCE:

We believe that an independent mutual fund governance agency is vital to certain mutual fund group. As an independent owner-operated mutual fund manager, we do not have the same conflicts of interest that arise with financial institution sponsored mutual fund managers. The example sited

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above is typical of conflicts that arise for such mutual fund managers. Other issues that surround setting up an independent mutual fund governance agency include the following:

- **Qualified individuals**: ability to find qualified independent individuals who have the experience and knowledge of the mutual fund operations/management. Many of these skilled individuals are concentrated in Eastern Canada. For smaller independent mutual funds located in Western Canada, it would be very costly to have regular board meetings. Furthermore, our employees/shareholders understand and have more at stake in the Firm and clientele than third party with general knowledge of the mutual fund industry. Questioning the ability of a fund manager is not a simple task. Qualified individuals must be unbiased and have strong conviction to stand up to questionable fund manager and be able to decipher true conflicts of interest.

- **Remuneration**: compensation paid to these individuals will certainly impact smaller owner-operated mutual funds greater than large financial institutional mutual funds where the additional costs can be spread over a larger base. Most members will charge a fixed fee per meeting which is then absorbed by the fund. In our case, these fees are absorbed by our Firm because we feel it is unfair to pass these costs onto the clients.

- **Power**: Most owner-operated mutual fund manager fulfill several unique roles. These duties include: managing the portfolios, marketing their own in-house funds and administrating the record-keeping for those funds. Ability of the governance agency to effectively oversee the management and operations of the mutual fund and have the power to correct any problems seems less important for owner-operated mutual funds since our goals and objectives are aligned with the clients. Such managers are not involved in underwriting or are they able to purchase for the fund the sponsoring financial institution's common stocks. These activities give rise to potential conflict of interests between the fund manager and the clients.

We believe that there are significant differences between large financial institutional sponsored mutual funds and small owner-operated mutual funds. If the same set of rules were applied to both groups, the cost borne by the smaller funds will undoubtedly exceed the benefits and would result in fewer smaller funds, a concentration of ownership of remaining funds and higher costs for the investors.

Limited Liability/standard of care:

We fully support a limit on the liability of a governance agency member for breaches of the standard of care. However, this liability should reflect the size of the assets under management. We believe having a limit on liability will attract more qualified and skilled individuals. Many of the members will require a level of insurance, but the coverage amount and deductible will depend on several factors. These factors include: ownership structure of the fund, nature of the clients within the fund, type of securities held, leveraged transactions, any non-arm's length transactions and other related activities performed by the fund manager. In general, more importance should be place on finding qualified and knowledgeable individuals if the fund structure is complex.

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Power to terminate the manager:

For an owner-operated mutual fund whereby the fund is an integral part of the identity of the fund, it does not make sense to dismiss the fund manager. We agree that most of our clients invest in our funds because they are comfortable with our investment style and are familiar with us. The interest of an owner-operated fund manager is aligned with those of the client. Hence, it would be unlikely that a renegade fund manager would exist. This can not be said for large funds who hire managers to manage "fashionable" mutual funds. It is important that governance agency have the power to oversee these types of managers and make the necessary changes to protect the investor. We also feel the ability to change a manager is unnecessary where no fees were paid to purchase and no fees are paid to sell the fund. Unitholders will simply redeem if they are not satisfied.

REGISTRATION OF MUTUAL FUND MANAGERS:

Having to register in yet another category would undeniably add to the mountain of paperwork which already exists. The focus should be on developing an annual registration process in one Canadian jurisdiction to govern registrants who desire to conduct business across Canada. Furthermore, a single registration would also require jurisdictions to have similar registration requirements in order for it to be successful. The question of an additional category is an important concept, but we feel that the focus should also be on eliminating duplicate registration. Having a set of proficiency requirements for all fund managers is appropriate. Our Firm policy encourages all investment professionals, including research staff and client contact staff to work towards the Chartered Financial Analyst (CFA) designation. This imposes a certain level of technical and ethical standards which further promotes the highest level of professional conduct. We believe a CFA designation should be required by the person ultimately responsible for investment decisions of a mutual fund.

MINIMUM CAPITAL REQUIEMENTS:

In the case of an owner-operated fund manager with no custodial duties or access to client money, having a large capital requirement serves no purpose.

The above are several of the major issues that are important to us. We look forward to further discussions with your staff and if you have any issues you wish us to elaborate upon, please do not hesitate to contact the undersigned at (604) 683-3391.

Yours truly,

LEITH WHEELER INVESTMENT COUNSEL LTD.

"Cecilia Wong", CA, CFA
Chief Financial Officer

CW:mc