June 11, 2002

Ms. Rebecca Cowdery
Manager, Investment Funds Regulatory Reform
Ontario Securities Commission
20 Queen Street West
19th floor, Box 55
Toronto, Ontario
M5H 3S8

Dear Ms. Cowdery:

RE: Response to CSA Mutual Fund Governance Concept Proposal 81-402

Dynamic Mutual Funds Ltd. ("Dynamic" or the "Manager") is one of the few mutual fund managers that has a fully operational governing body that has functioned in this capacity for over 5 years. We are proud of the relationship we have with our Board of Governors, (the "Board") which is based on open and transparent communication, and feel that this independent body has provided us, as well as our unitholders, with valuable oversight and assistance. We are fully supportive of the principle of fund governance and are pleased to be able to provide our comments on the proposed concept proposal.

We also attach herewith comments written directly by our Board, who can respond from a different perspective, being the practical application of some of the proposed recommendations.

On behalf of Dynamic and the Board, we thank you for the time you took to meet with us so that we could articulate our views in more detail. While we concur fully with the Board's response, we also offer the following additional comments:

A. Relationship is key to a functional governing body

One of the reasons our Board functions so positively within our company is the relationship between the Board and the Manager. The Board covers almost all of the suggested topics in the proposed Section 5 of the proposal through an ongoing process of interviews, communication, report generation, sample testing and review of specific information. The Board has developed their mandate and procedures over time, with the assistance of the Manager. What is not clear from Section 5 is how the regulators expect the governing agencies to carry out their functions and a clear definition as to what is intended by review and supervise. We do not feel that it is realistic to suggest that the governing agency would

independently "audit" the entire control environment of the manager. We do feel, however, that the governing agency should ask all the appropriate questions to satisfy itself that the manager is functioning within the appropriate guidelines and procedures. It is very important to articulate what the actual standards and procedures will be for the governing agency to carry out these duties. It is equally important that the procedures do not automatically create a wedge between the agency and the manager, where the emphasis is on covering personal liability and risk instead of mutual cooperation and coordination.

B. Better mechanism for dispute resolution

The ability for the governing body to call a unitholder meeting, in our view, is not a feasible solution and will not achieve the desired outcome of dispute resolution. We believe that it is imperative for the Board to communicate their views on the fund company's governance structure and any disputed items directly to unitholders through means such as an annual report from the agency. Once such information is in the public domain, the ability for the governing agency to resign at any time, coupled with the ability for unitholders to redeem, is sufficient to protect investors. It is also possible for the regulators to consider setting up a mechanism for dispute resolutions for situations in which the Board does not wish to resign.

C. Costs and Capital issues

We have already invested significant resources in our governance process. We know from experience that the costs of fund governance are not insignificant. Examples of these costs include increased administrative costs to prepare Board material and requests, increased consultant costs to generate information and material unique for the Board, Board member fees and other related costs. Consideration should be given to the fact that smaller mutual funds may not be able to pass on the additional costs of fund governance to unitholders due to constraints in increasing MER's. It is therefore important that minimum standards attempt to limit the additional cost burden for smaller or less profitable fund companies.

With respect to capital, the proposed capital requirements increase as assets under management increase. As a larger fund company is not necessarily more "risky" than a smaller company, we question the relevancy of this formula.

D. Product Regulation

As the proposed fund governance regulations are intended to be coupled with changes to product regulation, it is important that the industry understands what these product regulations will be. Additionally, it would be difficult, if not impossible, for fund companies to operate in a regulatory framework where the

product regulations were not consistent throughout all the provincial securities commissions. We look forward to having these issues clarified in the near future.

In conclusion, we hope that the fund governance structure that ultimately emerges will allow other mutual fund companies to experience the positive and rewarding experience that we have had with our Board. An environment where risks and liabilities will cloud sound business judgment will not achieve the desired results. We reiterate our Board's offer to continue to assist in your process going forward.

Yours very truly,

David Goodman, B.Comm., LL.B, CFA
President & Chief Executive Officer

RESPONSE OF THE BOARD OF GOVERNORS

OF DYNAMIC MUTUAL FUNDS

TO CONCEPT PROPOSAL 81-402 OF THE

CANADIAN SECURITIES ADMINISTRATORS

Dynamic Mutual Funds ("**Dynamic**") has been in existence for over forty years. Up until 1995, its activities were carried on, principally beneath a corporate umbrella. In 1995, for a variety of reasons, including the ability of unitholders to switch their holdings from one fund in the Dynamic family into another without tax implications, the corporate entities were converted to unit trusts. As trusts do not require a board of directors, the Manager decided to provide the unitholders with an independent oversight committee to enhance and protect their long-term interests. Hence, in the late fall of 1995, the Board of Governors of Dynamic (the "**Board**") was constituted, consisting of five members, four (4) of whom were independent of the Manager. The mandate of the Board, includes the responsibility to enhance and protect the long-term interests of the unitholders and to provide sober second thought and business judgement to the management of the funds. At inception, it was expected that the Board would add greater specificity and definition to its mandate and formulate Board practices and procedures to follow.

Since its establishment, the Board has honed its mandate and increased the scope of its activities. Some of its activities are set out in Appendix A.

The objective of the Concept Proposal of establishing rules of governance for the management of mutual funds in areas not presently covered by regulation or statute, is of merit. Based on the Board's background and experience as a governing body for Dynamic funds, we believe that:

(a) A governance body comprised of a majority of independent members, limited in size from three to eight persons is a valuable entity for the enhancement and protection of unitholders' interests. Our Board presently oversees more than fifty (50) mutual funds. The task is made manageable through the use of the Review Committee, expertise of Board members, outside consultants and the Manager's staff.

(b) A Board exercising its role by overseeing the management of the funds in specific areas which are consistent with its role as the representative of the unitholders is appropriate. The Board should not act in a supervisory role nor should it interfere with the day-to-day management of the funds. A Board should meet on a regularly scheduled basis with the Manager and more frequently as required, in order to discuss, review and bring to the attention of the Manager, matters which the Board believes to be in the interests of the Manager and the unitholders. Our board meets at least quarterly.

(c) A Board should act as an oversight committee of sober second thought, and because of its responsibility as representative of the unitholders, it should actively question the Manager on any and all matters which it believes are not in the best interests of the unitholders. A Board should not act in an adversarial capacity with the Manager, but rather act in a collaborative fashion with the Manager to ensure that unitholder rights are continually protected, unless there is an extenuating circumstance that requires a different approach.

Our specific comments on the Concept Proposal are:

Scope of responsibilities too broad

The Concept Proposal sets out to establish governance agencies and to place upon these agencies the responsibility for certain precise areas of management which are articulated in Article 5 and its subsections in the place of government regulators who currently exercise this function. As a consequence of this shift of responsibility to governance agencies, the responsibility of such governance agencies will be much broader and more profound than is the current view of appropriate responsibilities for existing bodies such as our Board. Under the Concept Proposal, the governance agencies will have supervisory and monitoring duties without any definition of these terms. While the Concept Proposal explicitly states that governance agencies are not to manage the day-to-day affairs of mutual funds, given the duties imposed upon the governance agencies and the lack of current regulations or accepted industry wide practices, the Board feels that governance agencies will become deeply involved in the activities of the Manager.

With respect to the proposal to have the Board resolve disputes with the manager by calling a special unitholder meeting, we believe that this is not a viable solution. Disputes would be better dealt with by either the resignation of the board or the establishment of a dispute resolution mechanism through the OSC.

Lack of well-known industry best practices

Article 5 of the Concept Proposal expects governance agencies to carry out certain specific responsibilities in the absence of industry best practices. It appears that governance agencies may be expected to consider whether other or more extensive duties are relevant beyond those articulated in this section of the Proposal.

Unknown standard of care

Article 6, provides for a standard of care to which members of governance agencies will be subjected. This, as yet unarticulated standard of care, has been outlined in principle. The formulation of a standard of care is appropriate, however, because of the absence of industry best practices and/or regulation that will guide the behaviour of Managers, it appears that the courts may be the final determinant of whether or not the articulated standards are sufficient. They may even determine what the standards should be.

Liability too significant

The Board believes that without greater guidance provided in the regulatory framework or well-known industry wide practices, there will be nothing to prevent a proliferation of differing practices, which may be adopted by various Managers. This will set the stage for the intervention of the courts or other bodies to determine what Manager controls and practices are sufficient and whether or not the approval by a specific governance agency of practices adopted by the Manager was exercised in a reasonable manner. Without a firm foundation of regulatory and/or industry best practices and principles combined with safe harbour provisions, the burden of responsibility to be placed upon the governance agencies will be substantial. The burden may be so substantial, that notwithstanding the declaration contained in Article 4 of the Concept Proposal, that governance agencies are not to micro-manage the day-to-day management of the mutual funds, they may in fact, be obliged to do so in certain areas in order to meet the standards of care that has developed.The Board's view concerning liability and the need for insurance coverage would change under the proposed framework. Presently, the Board is

confident that the effort that the members apply to their work would certainly meet the "prudent person rule".

Management accountability for compliance

Article 5(b) requires governance agencies to approve and monitor a Manager's compliance with policies and procedures that have been identified by the governance agencies to be material to investors. The governance agencies must then approve and monitor compliance with these policies and procedures.

The governance agency must first satisfy itself that the policies and procedures of the Manager are sufficient before it can give any approval of the Manager's compliance. **This will require the governance agency to conduct a substantive review of such policies and procedures. In addition, in order to meet the articulated standard of care, the Board may have to go beyond the reports of the Manager and its staff to conduct due diligence of the Manager's compliance.**

At present, our Board's Review Committee discusses with the Manager and its staff the effectiveness of internal controls. **Under the new regime the governance agency may be obliged to examine in detail such controls in order to meet the standard of care developed. The same concern will apply to the establishment of controls to monitor external service providers and delegated functions.** The provisions of (iii) will require the governance agency to take a more hands on approach to determine if the practices of the Manager are sound. It may not be sufficient simply to rely upon a report and an investigation into the practices and the Manager's compliance with them.

It is possible that due to these increased responsibilities, the Board will turn to outside advisors as opposed to management to assist them in this hands on process. This would have the undesirable result of a) adding costs to the funds; and b) dramatically changing the relationship that currently exists between the Board and management.

Limitations of Board expertise

Similar concerns relating to the due diligence and/or meeting the standard of care by governance agencies will apply to the approval of the valuation of portfolio assets and the fund Manager's choice of bench marks as articulated in Article 5, subparagraph (d). **Members of**

governance agencies may not have the necessary qualifications to determine what bench marks should be utilized by a Manager, and thus to meet the standard of care, they shall have to rely on outside consultants.

Conclusion

The Board, because of its own experience, is of the opinion that the establishment of governance agencies to represent the interests of the unitholders and to act as a oversight committee to provide sober second thought and business judgement, is an excellent step. Insofar as the assigned duties and responsibilities of the governance agencies are concerned, this is also a welcomed step, provided that in the absence of securities regulations regarding industry best practices**, the industry develops best practices standards in order to create uniformity within the mutual fund industry, but also to enable the members of the new governance agencies to have standards of behaviour against which their standard of care can be measured.**

In essence, therefore, the Board approves of the principle of governance agencies and it approves of specific responsibilities being assigned but prior to holding the members of the governance agencies to a certain standard of care, a set of best industry practices, safe harbour provisions and sanctions must be put into place, in order that the members of the governance agencies will have a clear roadmap of their responsibilities and the manner in which they are to discharge them.

May 22, 2002

Appendix A – Board Activities

1. The Board participated with the Manager in the development of a Code of Ethics and Regulations for all employees, officers and directors of the Manager. The Code of Ethics and Regulations is reviewed on an annual basis and updated when necessary. The Manager's compliance committee is responsible for ensuring compliance with the Code of Ethics and Regulations, and reporting to the Board on a quarterly basis. Procedures have been put into place to ensure that all employees of the Manager adhere to and respect the Code.

2. The Board is active in reviewing communications with the unitholders to ensure that the information conveyed is clear, transparent and easily understood. The communications reviewed include the semi-annual and annual financial reports and simplified prospectuses.

3. The Board, in the absence of the requirement of an Audit Committee for mutual funds established as trusts, has constituted itself as a Financial Review Committee (the **Review Committee**") and has exercised with the full co-operation of the Manager, almost all of the oversight functions of a corporate audit committee, save for example the signing of the various financial statements. As a Review Committee, the Board

    1. meets with the Manager and its internal auditors in order to ascertain if internal controls are effective or if additional controls and systems are required;

    2. meets with the Manager to question and review the systems in place to ensure the accurate determination of daily net asset value of each fund; and

3. meets with the internal and external auditors of the funds to ascertain and obtain assurances that the expenses incurred by the Manager and charged to the funds are reasonable and properly allocated.

4. The Board also meets with the Manager on a regular basis to ensure that the funds are managed in line with the stated objectives of each fund.

In addition to the above noted activities, the Board has been involved in reviewing and dealing with conflicts of interests between the Manager, related companies and the funds.