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VIA EMAIL (PDF FORMAT) June 12, 2002

Canadian Securities Administrators
c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario 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 and Mesdames:

Re: Comments on Mutual Fund Governance Proposal - Concept Proposal 81-402 (the "Concept Proposal")

This letter sets forth our personal comments with respect to the Concept Proposal. The comments are not those of the firm.

1. Mechanism to Introduce Independent Oversight

We do not believe that a mandatory governance agency as proposed in the Concept Paper is warranted at this time. We believe that Alternative 1, the non-regulatory approach, combined with some "best practice" recommendations, would be the most desirable approach and that only if this approach did not prove effective should the possibility of regulation be reconsidered. We believe this approach could be combined with a requirement for disclosure of governance practices, comparing them to best practice guidelines, and disclosure of how specific conflicts of interest are addressed.

We believe that the role of the governance body that would be suggested by this non-regulatory approach should be to act as an advisory council for the manager, to assist the manager in making decisions concerning the management

of the mutual fund where the manager considers that extra guidance would be helpful in making decisions, particularly where there may be a perception that the decision is one that could involve a conflict of interest for the manager. (We will refer to this body as the "Advisory Council" in this letter.) We believe that all decisions concerning the management of the mutual fund are and would remain the responsibility of the manager as a fiduciary and as the entity that is legally responsible for the management of the mutual fund. We believe that the only result of the manager following a course of action that the Advisory Council does not agree with, should it choose to do so, is that such disagreement should be disclosed in the prospectus or annual information form or by separate notice to unitholders that would accompany the financial statements sent to the unitholders or be posted on SEDAR. We believe this alternative to be most appropriate for a number of reasons:

(a) Nature of Mutual Funds

We believe that the relationship between an investor in a mutual fund and the mutual fund manager is functionally equivalent to the relationship between a portfolio manager and its clients. Investors in mutual funds seek professional portfolio management and diversification of their investment. Mutual funds are not analogous to public corporations with operating businesses. As an investment in a mutual fund is liquid and valued based on the underlying assets (as opposed to a market price) and does not represent an interest in an operating business, it is not subject to the same risks as an investment in other types of public issuers. Accordingly, we do not believe that investors in mutual funds need to have, or to benefit from, rights equivalent to those of a holder of common shares of a corporation or units in an income trust.

While we believe that there is considerable value in having an independent Advisory Council to assist and consult with the manager, we do not believe that requiring mutual funds to have a governance agency which has the powers and authority (including the authority in certain circumstances to call a meeting to consider the termination of the manager) recommended in the Concept Proposal is appropriate for the Canadian mutual fund industry. Further, we believe that there is value in affording managers the flexibility to determine the most appropriate structure for introducing the Advisory Council. As noted in the Concept Proposal, funds have a variety of structures, and a number of funds have already introduced an independent governance agency. We believe mutual funds and their managers should have the flexibility to introduce an independent Advisory Council in any one of a number of ways: as a separate advisory body, as a committee of independent directors of the board of the manager, through independent trustees of the fund, or in some other fashion.

(b) Nature of a Mutual Fund Investor

We believe that Alternative 1 is a more appropriate structure for mutual fund governance given the nature of mutual fund investors.

Mutual fund investors are typically passive investors, and in respect of matters which require securityholder approval, our experience is that investor response is very low. Given the liquidity of a mutual fund investment, it is understandable that investors do not seek to have input into the management of the fund.

Accordingly, we believe that the most appropriate alternative for mutual fund governance would emphasize disclosure to investors, allowing investors to "vote with their feet". To impose a structure which, in certain circumstances, would require meetings of securityholders of the funds and mailing notices to unitholders would, we believe, increase the costs of operating the funds, which costs would ultimately be passed on to investors.

The imposition of a mandatory independent governance agency with the powers and authority outlined in the Concept Proposal and the use of unitholder meetings for dispute resolution in certain circumstances, would, in our view, be expensive and inefficient, and would only serve to reduce the attraction of mutual funds as an investment option for retail investors.

(c) The Role of the Manager

We believe that investors in mutual funds buy securities of mutual funds to gain access to the expertise and skills of the manager.

The imposition of a mandatory independent governance agency with the powers and authority outlined in the Concept Proposal may have the effect of substituting a different decision maker for that of the manager which, we submit, is not what investors are seeking. As the manager, and in the case of a trust, the trustee, already owe fiduciary obligations to investors in the fund, we believe adding a mandatory independent governance agency and imposing fiduciary obligations upon the governance agency is unnecessary at this time. Further, if the goal is to require an independent governance agency with "real teeth" as outlined in the Concept Proposal, the governance agency would by necessity need to have some control or ability to fire the manager or, as set out in the Concept Proposal, call a meeting of investors to consider replacing the manager. In the context of mutual funds, we do not believe that such authority is the most efficient way to monitor the manager.

Given that securities of mutual funds are redeemable on demand, we believe that Alternative 1 would be a more efficient structure for fund governance. While an investor's ability to redeem may bring with it a

redemption charge, we do not believe that there are circumstances where redemption charges should be waived. By agreeing to purchase securities of a mutual fund on a deferred sales charge basis, investors gain the benefit of not paying a sales commission at the time of investing. Further, mutual fund managers confer the benefit on investors through paying sales commissions in exchange for the right to receive a redemption charge at a later time. We believe that requiring the manager in certain circumstances to waive redemption fees could be an unjust enrichment to the investor. However, we believe that consideration should be given to how mutual funds are sold and whether investors appreciate the consequences of choosing to purchase on a front-load or rear-load basis. Perhaps consideration should be given to more point of sale disclosure and education by mutual fund dealers of the ramifications of the different purchase options.

(d) Cost/Benefit Analysis

We understand that part of the impetus for developing a framework for corporate governance for mutual funds is to make Canadian regulation more consistent with investment fund regulation in other jurisdictions. While we understand that certain other jurisdictions have, amongst other things, requirements for independent review of the activities of the fund manager, it is unclear to us whether these requirements in other jurisdictions have proven effective to avoid abuses and whether they are considered beneficial in light of the costs that the requirements impose.

We believe it is likely that a mandatory independent governance agency with the powers and authority described in the Concept Proposal would be of significant expense for funds and, indirectly, investors. By imposing fiduciary standards on independent governance agencies, we believe that it would be likely that the independent governance agency would seek at minimum independent legal counsel and perhaps other advisers and consultants as well as administrative staff. Costs would also include insurance and fees (which may be performance-oriented in nature) of the members of the governance agency, both of which are difficult to quantify. Insurance in particular might be difficult or expensive to obtain. Given that, to our knowledge, there are no actual abuses which are the impetus for the regulation of mutual fund governance, we believe that the proposal set out in the Concept Proposal would entail a cost that could outweigh its benefits.

We believe at this time Alternative 1 would be a more appropriate structure for mutual fund governance and, if Alternative 1 were selected, the proposal could be revisited after a few years with a view to assessing whether it has accomplished the objectives of the Canadian Securities Administrators (the "CSA").

2. Registration of Fund Managers

We do not believe that a registration regime for mutual fund managers would add any significant value. Requiring fund managers to be registered adds an additional cost to the manager and we believe would achieve little benefit. Mutual fund managers are already subject to regulatory oversight by virtue of falling within the definition of "market participant" under securities legislation. If registration is to be required, then we would recommend that only firm, not individual, registration be required and a national passport system should be adopted, both of which ideas were suggested recently by the B.C. Commission that we consider very desirable.

3. Other Vehicles

We agree that similar investment vehicles should be subject to similar legislation, but believe that consideration should also be given to the differences amongst the investment vehicles. For example, we believe that any governance regime adopted for mutual funds should apply to closed-end funds. In fact, with respect to publicly offered closed-end funds, as investors do not have the right to effectively "vote with their feet" through redemptions based on net asset value, we believe that it is even more important that a role for an independent advisory council be adopted. We do not believe that a fund governance regime should be imposed upon pooled funds. Pooled funds are very much the equivalent of a discretionary managed account relationship between a professional adviser and its clients. The costs of imposing an independent party in the governance of pooled funds would undoubtedly be prohibitively expensive for many pooled funds. Further, investors in pooled funds are typically sophisticated (so that they do not require the protection of a prospectus) and we submit a fund governance regime in the context of pooled funds would not add any value for investors[1].

We would discourage the CSA from requiring non-publicly offered investment vehicles to meet any specific governance requirements, manager registration requirements or other mutual fund requirements. These products, which include pooled funds, private equity funds, corporations (e.g. private versions of EdperBrascan, the former Harrowston, and Onex) that act as investment vehicles, are offered to sophisticated investors. They adopt various governance models, including boards of directors (with independent directors), investor advisory committees, investment restrictions, etc., as are suited to their particular circumstances. Requiring the managers of these vehicles to be registered and to meet public mutual fund-oriented standards that will not suit them well is entirely inappropriate, in our view, and will discourage such

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[1] We also believe that investment vehicles (of any form) that are formed and, as the case may be, regulated outside Canada should be expressly exempted from the proposed fund governance regime provided the securities of such vehicles are sold into Canada in compliance with applicable Canadian private placement requirements.

vehicles and reduce investor opportunities and the creativity and vigour of Canadian capital markets. Whatever rules the CSA create should be limited expressly to publicly offered mutual funds, similar publicly offered vehicles (such as closed-end funds investing in a diversified pool of securities).

4. Changes to Prohibitive Rules: The "Quid Pro Quo"

We find it somewhat difficult to assess the Concept Proposal without having a better understanding of the proposals to change mutual fund regulation. Further, we believe that certain of the changes to the prescriptive rules need not be contingent on a independent governance framework being established. For example, exemptive relief has been given in certain circumstances from Section 4.1 of National Instrument 81-102, fund on fund restrictions and other prohibitions. A number of these broad prohibitions have been considered for some time and we believe that "safe harbour" exceptions could be developed relatively easily, perhaps in conjunction with disclosure and recordkeeping requirements. We do not believe revisiting these regulatory requirements should be contingent on the adoption of a new framework for mutual fund governance. If the CSA is considering more fundamental regulatory reform than revisiting these types of prohibitions, we believe that the Concept Proposal would need to be considered in conjunction with such reform, to enable the industry to evaluate the duties, responsibilities and liabilities of the governance agency.

5. Other Matters

In the event that the CSA determine to adopt a regulatory approach (as opposed to Alternative 1), we have set out below a few additional comments for consideration:

(a) The suggestion on page 22 that the governance agency should "inform the regulators" about non-compliance with policies and procedures seems to seek to give policies the force of law. Policies need to be flexibly interpreted to deal with changing situations without creating the risk of regulatory intervention for non-compliance.

(b) The suggestion on page 23 that members of the governance agency would determine their own compensation, subject to the ability of the manager to have investors vote it down, seems likely to lead to higher expenses. If a manager believed that the compensation set by the governance agency were too high, the manager would be reluctant to incur the cost of an investor meeting or attract the publicity that it would bring. Permitting the manager to set the compensation, and providing the members of the governance

agency with the right to seek investor approval to increase compensation might be more appropriate.

(c) The suggestion on page 24 that governance members could elect their successors also seems troublesome. We believe that the manager should have the right to select members of the governance agency. Further, giving governance agency members the right to "terminate" other members, as is suggested on page 27, seems inappropriate. It could conceivably lead to "clique-ism", "divide and conquer" strategies and other inappropriate behaviour, when what is being desired is a cooperative process in the interests of investors.

There is also a suggestion on page 27 that investors in every fund overseen by the governance agency could be asked to decide to replace members of the governance agency. This may prove difficult mechanically. Would this require an overall vote (and if so, would votes be based on value or numbers of units across different funds)? Alternatively, would one or more funds be given a veto in effect by either requiring approval of unitholders of all funds or some multi-fund approval level?

We trust these comments are helpful.

Yours truly,

"William J. Braithwaite"

William J. Braithwaite

"Jennifer Northcote"

Jennifer Northcote

"Simon A. Romano"

Simon A. Romano

"Kathleen G. Ward"

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