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BY ELECTRONIC MAIL

Mr. John Stevenson
Ontario Securities Commission
20 Queen Street West
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- and -

Ms. Denise Brousseau
Commission des valeurs mobilieres de Quebec
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P.O. Box 246, 22nd Floor
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Dear Mr. Stevenson and Ms. Brousseau:

Re: Response of Borden Ladner Gervais LLP to Concept Proposal 81-402

Thank you for the opportunity to respond to the Canadian Securities Administrators' Concept Proposal 81-402, *Striking a New Balance: A Framework for Regulating Mutual Funds and their Managers* (the "Proposal").

Background To Our Response

We have divided our response into two parts. First, we have provided some general comments on the Proposal and, in particular, on two of its pillars. Second, we have responded to each "Issue For Comment" in the Proposal.

Our comments represent the collective thoughts of the whole Investment Management Group of Borden Ladner Gervais LLP ("BLG"). These comments do not necessarily reflect the opinions or feedback of all of our mutual fund clients. BLG did, however, recently host a client seminar where the Proposal was discussed in an open and candid dialogue. In some areas of our response we have included feedback we have received from certain of our clients. We have also encouraged our clients to express their views and concerns with the Proposal on an individual basis directly with the CSA.

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The Proposal

As a starting point in assessing the Proposal, we were mindful of the fact that the Canadian mutual fund marketplace is an already heavily-regulated industry - provincial securities legislation and regulations, National Instruments 81-101, 81-102 and 81-105 – all of which are administered by thirteen different regulators.

In the introductory overview, the Proposal states that it will "detail proposals to reform the current regulatory framework" for mutual fund regulation in Canada. Indeed, the Proposal outlined in great detail how the CSA would introduce a registration system for fund managers (pillar 1) and enhance fund governance (pillar 2).

We were, however, disappointed that the Proposal failed to offer meaningful details or proposals concerning pillars 3, 4 and 5 and, in particular, how the CSA would "streamline" the current regulatory regime, move away from "detailed and prescriptive regulation", and how it would otherwise adopt a more "flexible regulatory approach".

In short, we were obliged to consider a fund governance and manager registration regime (i.e., "layering new regulation on top of old") in isolation, without the benefit of considering corresponding proposals to restructure, streamline or reduce the existing regulatory framework into which pillars 1 and 2 would be integrated. As a result, we believe pillars 1 and 2 are over-reaching, cumbersome, duplicative, costly (both in absolute dollars and on a cost-benefit analysis) and prescriptive.

On this basis, we found it difficult, if not impossible, to properly consider whether the Proposal offers any substantive improvements against the current regulatory regime. We strongly urge the CSA to view these proposed changes in the much broader context of reforming the regulation of mutual funds and other investment products with like features and risk profile. This, in our view, would include:

(a) consideration of the consistency of regulations across the country (ideally, a single national securities regulator and only one set of rules nation-wide; in the alternative, a far more cohesive set of rules, administered by the CSA in a manner which minimizes unnecessary expense and operational efficiencies);

(b) the disclosure and continuous disclosure regimes – put bluntly, whether investors should be given an even broader range of investments (e.g., funds with greater investment concentration or other investment opportunity/risk profiles not currently permitted) provided they are given ample opportunity to inform themselves of these factors; what documentation they should be required to receive and in what form (keeping in mind that to a very large extent, it is the investing public which pays the costs associated with this "investor protection"); and

(c) the substantive changes in the current rules and how those justify, and are related to, either the proposed fund manager registration or fund governance requirements.

We submit that it would be inappropriate to attempt to introduce significant and costly changes to the existing system on a piecemeal basis.

Governance Agency

As a threshold question, we query whether there exists within the Canadian mutual fund industry such crisis with respect to the manner in which funds are governed that calls for such sweeping regulatory reform as contemplated by the Proposal.

Having said this, we agree with the notion that *improving* fund governance is an objective worth pursuing. We disagree, however, that the governance agency model contemplated by the Proposal is the best way to obtain such improvements and, in some circumstances, may be contrary to the best interests of investors. Briefly:

(a) the proposed role of the governance agency is simply too broad. The "specific responsibilities" of the governance agency (governance principle #5) are likely to result in the governance agency micro-managing the day-to-day operations of the funds in a manner the CSA says, as a matter of broad principle, it does not intend;

(b) with such an all-encompassing mandate (including the power to call a meeting of securityholders to terminate the fund manager), we query:

    (i) who, ultimately, will be in charge of the business operations of the funds and whether the decision-making of the fund manager will be subject to constant second-guessing and review; and

    (ii) whether the management of the fund's investment portfolio by the fund manager or service providers will be compromised; and

(c) the costs of implementing and maintaining a governance agency model will be significant and, at this point of the analysis, do not appear to bear any correlation to improved fund governance.

Competitive forces in the mutual fund industry have aligned the interests of managers and investors to such an extent that, but for certain limited and discrete conflict of interest situations (e.g., related-party transactions), there is no need for the Proposal's extensive governance agency model. We agree that there is a need for a governance agency, however, the role of a governance agency should be restricted to conflict of interest situations where it would act independently as a proxy for investors to ensure that decisions are made (solely within the scope of these particular conflict of interest matters) in the best interests of the fund and its investors.

Registration of Fund Managers

The Proposal states that manager registration will achieve two CSA objectives – to give regulators oversight over companies acting as fund managers and to ensure consistent

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national minimum standards. We agree that these objectives are essential to mutual fund regulation in Canada.

Both objectives are currently and adequately addressed through the existing regulatory regime making manager registration wholly unnecessary. Our view is based upon the following:

(a) In some provinces, as "market participants", fund managers are already under the purview and oversight of regulators through provincial securities legislation. To the extent that this concept is not currently incorporated into the securities legislation of all provinces, it could be adopted nationally by inclusion in National Instrument 81-102.

(b) The activities of fund managers are already subject to standard of care provisions found in provincial securities legislation.

(c) In connection with prospectus reviews and issuances of final receipts, every regulator has the ability to review the fund manager and the qualifications of its directors and officers. Regulators can, in fact, withhold a final receipt until the regulators are satisfied that all issues with respect to the integrity of the fund manager, its operations and the funds are satisfactorily resolved. Currently, for example, the Ontario Securities Commission does RCMP checks in respect of the directors and officers of the fund manager (a check which would be duplicated in connection with registration) prior to issuing a receipt for a mutual fund prospectus. These types of checks could be expanded to meet the objectives described above.

Therefore, regulators can already avail themselves of sufficient oversight and remedial powers afforded under the current regulatory regime if and when concerns arise about a manager, its business operations or the funds under management. If a fund manager registration requirement is to be imposed, we urge the CSA to ensure that it does result in duplicative requirements or unnecessary expense.

Final Thought

Mutual funds compete with other investment products in the marketplace. Investors and the financial press already express concern about the expense ratios which represent a drag on their return. Fund governance and fund manager registration requirements will directly or indirectly increase, or prevent the reduction, of these expense levels. Therefore, the cost of potentially "over regulating" the industry must be considered very carefully.

Specific Issues For Comment

In this section, we have responded to the specific issues upon which the CSA has sought comment in the Proposal. These responses should be read in the context of the general views expressed above.

1. **We see our renewed framework for regulating mutual funds as a step towards a more flexible regulatory approach, one that represents a movement away from detailed and prescriptive regulation. By streamlining our regulation, we want to create a regulatory regime that can accommodate changes within the industry and keep pace with changes in other segments of the market and global market places. What are your views on our renewed framework? Will it represent an improvement over our current model?**

Our clients strongly support regulatory reform that represents a movement away from the existing detailed and prescriptive regulatory regime, and towards more streamlined and flexible regulation. However, we believe that it is a very open question as to whether the renewed framework described in the Proposal will represent such a movement. For example, the manner in which the first two pillars are described in the Proposal show little movement away from a detailed and prescriptive approach to regulation, and contain few features that resemble steps towards flexible and streamlined regulation. Instead, they appear to represent an additional layer of the same type of detailed rules already applicable to the mutual fund industry. Although the third pillar may hold significant potential to achieve the objectives described, the Proposal provides almost no basis upon which to assess this. As a result, while at this point it is difficult to comment on whether the renewed framework will be an improvement, our preliminary view is that it will not. Further information on the third, fourth and fifth pillars will allow us to comment more definitively on the merits of the renewed framework as a whole.

2. **After reading the staff research paper and the text box above, what is your opinion about the alternatives to our proposed approach? If you believe we should not change the status quo, please explain why. If you favour one or more of the alternatives we set out, please explain why. Are there other alternatives that we should consider?**

Of the alternatives described, the first alternative and to a lesser degree, the third and fourth alternatives seem most consistent with a flexible, streamlined approach to regulation that represents a movement away from detailed and prescriptive rules, and for that reason, appear preferable to the proposed approach outlined in the Proposal. A variation on these alternatives would be one that outlines guidelines for fund governance and provides those funds (or managers) that comply with those guidelines with certain benefits, including exemptions from certain or all of the existing conflict of interests rules.

In addition, we encourage the CSA to consider carefully alternatives that adopt the approach and rationale underlying the concepts outlined in the British Columbia Securities Commission concept paper "New Concepts for Securities Regulation". We have received very positive feedback from our clients regarding the approach reflected in that concept proposal paper.

3. **Do you agree that labour sponsored investment funds (where applicable) and commodity pools should be subject to the same regulatory scheme as other**

mutual funds (considering the specialized rules that we already have for these specialized mutual funds)? If not, why?

Our clients consistently comment on the need for harmonization of the rules applicable to collective investment vehicles, and express concerns regarding the inequities created by existing rules.

4. Which parts of our renewed regulatory framework should be extended or not extended to other investment vehicles¾and which investment vehicles? Why do you believe the particular regulation should or should not be extended? What is the essential difference¾or similarity¾between the particular investment vehicles that mean they should be regulated differently or the same?

While, in responding to this question, we have examined the differences between mutual funds and other investment vehicles and used those differences to support or argue against the extension of the proposals to the vehicles, these remarks should not be viewed as inconsistent with the portions of our responses which question the applicability of the proposals to mutual funds themselves. For this question only, we have adopted the assumptions on which the proposals are based for the purposes of distinguishing other forms of pooled investment vehicles.

This question is broad both in terms of the scope of analysis of the regulatory proposal and the investment vehicles that could be considered. The common thread in the vehicles suggested by the Proposal for examination are those where an investor's investments are in some way pooled with those of other investors. The Proposal considers mutual funds that are exempt from prospectus requirements (referred to in this letter as "pooled funds"), segregated insurance funds, exchange traded funds, quasi closed end funds and closed end funds listed on an exchange. The Proposal does not encourage comparison with various forms of wrap accounts although their operation and objectives are also similar to that of mutual funds. Each of these has a structure that is different from the other and in most cases different from a mutual fund. Also, distribution methods differ. These differences argue against the extension of the proposed regulatory regime to a greater or lesser extent.

The proposed regulatory regime is based on the conclusion that by investing in a mutual fund, investors are purchasing the skill of that fund's manager as well as a security. In a retail mutual fund environment, the CSA believes that Canadian investors have neither the resources nor the inclination to effectively oversee the managers of their funds. In the context of most pooled funds, the investor is also purchasing the skill of that fund's manager. However, in contrast to the retail environment, investors in pooled funds generally have both the resources and the inclination to oversee the manager. In fact, managers of pooled funds often are called upon to justify or explain their management by the investors in the pooled fund. This accountability to investors is often a natural extension of pooled funds' role as an efficient and cost effective way of fulfilling a mandate of portfolio management for clients. The managers of pooled funds are also typically the portfolio managers of client assets and have close relations with their clients.

As such, virtually all elements of the proposed regulatory scheme are unnecessary and redundant in the context of pooled funds. In their primary activity of investment counselling and portfolio management, the managers are already registered so that additional registration is redundant and not useful. Registered investment counsel and portfolio managers are already required to disclose their policies with respect to conflicts of interest to their clients. Since those clients are able and willing to oversee their managers, disclosure and consent is a realistic control. Independent oversight is not necessary. Product regulation and required disclosure for pooled funds is already recognized to require much less intervention and oversight than for mutual funds.

Segregated funds, on the other hand, are distributed on a retail basis, like mutual funds. We are aware of the report of the Joint Forum of Securities and Insurance Regulators in which mutual funds and segregated funds and their regulatory schemes are compared. Clearly, the structures of mutual funds and segregated funds differ in many ways. For example, funds invested in a segregated fund and the investments made with them are the property of the insurance company and the investor has a contractual promise of the insurance company to pay the funds back on certain conditions. Funds invested in a mutual fund and the investments made with them never become the property of the manager. The risks are therefore quite different with segregated funds and mutual funds and these differences argue for a different approach to regulation. Effective regulation seeks to address the risks presented. We believe that the basic structural differences between segregated funds and mutual funds warrant a full examination of their regulatory schemes and a thoughtful approach taken to the regulation of both.

Exchange traded funds ("ETFs") are similar in structure to mutual funds in that they allow an investor to acquire an interest in a basket of stocks through a single security. Unlike traditional mutual funds, ETFs are transferable and traded on public exchanges. Traditional mutual funds are liquidated through redemption from the issuer at the then current net asset value per security. Also, at this stage in their development, ETFs are passively managed, tracking one of a variety of stock market indexes. When these differences are viewed from the perspective of the investor, it is apparent that a purchase of an exchange traded fund is much less a purchase of the skill of the manager than traditional mutual funds. Distribution does not rely on the systems and records of the fund manager but on independent market forces. Trading through an independent market relieves the manager of having to determine an adequate amount of cash to have on hand to fund anticipated redemptions. Much less of the manager's skill, industry and judgement is involved in tracking an index with investments than in actively managing a portfolio of investments, as is supported by the lower fee charged by ETFs. In summary, the differences argue against the applicability of the basic premise on which the CSA has premised the proposals and, therefore, the extension of those proposals to ETFs.

Closed end funds and quasi closed end funds share similarities with traditional mutual funds except that trading is accomplished by sales of interests to purchasers rather than by redemption. The result is that these funds typically trade at a discount to net asset value (although, in theory, they could also trade at a premium). Distribution, as with ETFs, does not rely on the systems and records of the manager. However, in all other

respects closed end funds are similar to traditional mutual funds. To that extent, extension of the proposals to closed end funds is supported.

5. Although we do not address the fifth pillar of our proposed framework, we invite you to give us your ideas on how we could better carry out our role as regulator.

We believe that there is a valuable role for regulators to play in today's securities marketplace. We also recognize that securities regulation contains a regulatory and institutional legacy that is embedded in our economic framework and informs the expectations of market participants and the functioning of regulators. Our view is that the objectives of investor protection and efficient and effective capital markets in the area of pooled investment are not mutually exclusive.

The CSA's goal of reducing prohibition based regulation is laudable, however, the only description of the fifth pillar of the proposals in the proposals refers to "enhanced" regulatory presence. The description then refers to an increase in review of offering documents, continuous disclosure and sales communications as well as increased on site reviews of managers. Based on this limited description, it does not appear that either the investors or the market will be well-served. Compliance costs will increase for fund managers and eventually for investors and the benefits are not clear.

Rather, it is our view that regulation with a more precise focus and greater transparency would be of more benefit to both the market place and investors. There are more potential areas for extensive thought and discussion of this topic than could be done justice in this response. However we would like to suggest the following ideas for further effort:

- Consider an approach similar to that proposed by the British Columbia Securities Commission with respect to disclosure: continuous disclosure rather than annual renewal for funds always in distribution with less regulatory scrutiny and greater investor accountability.

- Develop with the industry clear guidelines for fund managers to look to in designing and implementing their own compliance programs. The guidelines should be public and responsive to investor needs and industry realities. We believe, based on our extensive work in this area of law, that the majority of fund managers have a culture based on compliance and have a true interest in the well-being of investors. Their ability to be compliant would be fostered by clear guidelines. Reviews would be less time consuming and more productive for both regulator and manager if compliance expectations were known in advance of the review. The development of guidelines with members of the industry would ensure that they reflected the experience of the market participants.

- Focus on real areas of concern and bolster the focus with empirical data of issues in the industry. While we are not suggesting that regulation only act after there has been a loss to an investor caused by the action of a fund manager, an arbitrary

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approach for any and all possible sources of concern is not efficient nor helpful to investors.

- Encourage an alliance of interests between investors, regulators and market participants.

6. As you read this section of the concept proposal, please consider whether you believe our approach will result in mutual funds being monitored by a governance agency that:

(a) effectively oversees the management of the mutual funds;

(b) has real powers and real teeth; and

(c) adds value for investors.

If you agree or disagree that our proposals will meet these goals, please tell us why. What do we need to change in order to achieve them?

We have made many comments in the body of this response that address these questions specifically. In addition, our concerns about the ability of the proposals in the fund governance section to meet the goals of effective oversight and value for investors may be grouped around the following:

- There is a limited pool of persons experienced in the industry to perform effective fund governance;
- The costs of the proposed fund governance regime are largely understated, which will, in the final analysis, impose costs on investors;
- There has been little empirically-demonstrated need for the imposition of such a fund governance structure; and
- Depending on the scope of the governance agency's mandate, it is possible that management of the fund's investments by the manager or its delegates will be compromised by the governance agency's activity.

Notwithstanding the above, a governance agency will provide added value for investors if its role is to function as a proxy for investors in conflict of interest situations as outlined in our opening comments.

7. We kept Canadian corporate governance practices in mind as we developed our proposals. Have we omitted an important principle of corporate governance that you think should apply to mutual fund governance?

We do not believe that you have omitted any important principle of corporate governance that should apply to mutual fund governance. However, we do not believe that the role of the governance agency should be to effectively act as a "board of directors" of a mutual

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fund. The role of a board of directors in the typical corporate environment is to oversee the strategic direction of a corporation. This role should not be assumed by the governance agency but must remain with the manager. Rather, the role of the governance agency should be restricted to conflict of interest situations where the manager requires independent consideration of whether it is acting in the best interest of the funds.

8. Having read the Stevens legal research paper, do you believe a flexible approach to fund governance is preferable to a single legal model, such as a board of trustees for all mutual fund trusts? Why or why not? Do you see any practical difficulties with the legal options presented in that paper? Are there any other options we should consider? Do you agree with the analysis of Québec civil law?

We believe that a flexible approach to fund governance is essential and appreciate the initiatives in the Proposal to this end. The governance regime should be able to be adapted to various mutual fund structures, rather than having to adapt the structure to accommodate the governance requirements.

9. David Stevens writes about structural and situational conflicts in a mutual fund context. Do you agree with David Stevens' description of the conflicts? We agree with him that serious conflicts arise when the boards of directors of a fund manager or its shareholder(s) propose to act as the governance agency for a mutual fund and we propose to prohibit this. Do you agree with this conclusion? Please explain your answer.

We agree that the board of directors of a fund manager or its shareholder should be prohibited from acting as the governance agency of a mutual fund. It is particularly (and solely) in situations where the manager is in a situation of conflict, and therefore perceived to be unable to make an unbiased decision, that we view the governance agency as having a role. It would therefore not be appropriate to have this function carried out by the board of directors of the manager.

10. Do you agree with our proposals and our analysis of owner-operated mutual funds? If not, please explain.

We disagree with your proposals in relation to owner-operated mutual funds.

Not all purchasers of owner-operated mutual funds are shareholders of the manager of those funds. The group of investors will likely be larger than just limited to shareholders of the manager. All investors should be afforded the same protections whether part of an owner-operated complex or a traditional mutual fund complex.

Permitting the board of directors of a fund manager or shareholders of a fund manager of an owner-operated mutual fund to act as the governance agency for these funds may not provide sufficient controls in respect of such issues as expense and cost allocations between the manager and its mutual funds.

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We note that one owner-operated participant in Ontario, believing that there is an important role for independent oversight, has adopted a fund governance philosophy which includes separate business conduct review and advisory committees of the board.

11. We do not currently propose to specify the maximum number of mutual funds that may be overseen by a governance agency. Is there a practical limit to the number of mutual funds that one governance agency can oversee effectively? Are mutual funds managed in ways that are sufficiently common to all mutual funds so that one governance agency can oversee all mutual funds in a related family? Should we provide guidance to the industry on the scope of oversight for a governance agency?

If the Proposal's governance agency regime were imposed, we agree that the maximum number of mutual funds that may be overseen by a governance agency should not be specified. However, the practical limit to the number of mutual funds that one governance agency can oversee will depend, in part, upon the scope of an agency's oversight, the role and responsibilities of an agency and the liability to which its members are exposed. For example, as currently proposed, the governance agency will be required to review and approve the financial statements of the funds. The level of review required could provide an effective limit on the number of funds which could be overseen effectively.

We agree that mutual funds are managed in ways that are sufficiently common to all mutual funds that one governance agency could oversee all mutual funds in a related family. One governance agency may also be in a better position to analyze inter-fund conflicts across a fund complex.

12. Do you think fund families will find it difficult to recruit qualified members for a governance agency at a reasonable cost? Do you have any experience with trying to recruit members of a governance agency?

We believe that managers will find it very difficult to recruit qualified members for governance agencies at a reasonable cost. The number of qualified and interested individuals is limited and the degree of liability to which its members are exposed will also have impact on the ability to recruit qualified people.

13. Does the definition of independent members make sense to you? Will it be easy to apply to potential governance agency members? If not, can you suggest an alternate definition or the clarifications you think are necessary? What do you think about whether or not we should require a majority or all members to be independent?

The definition makes sense. However, for clarity, we would like to see examples set out in companion policy provisions. It would depend on the role of the governance agency as to whether all of the members should be independent. If there were to be a governance agency made up of joint members, then a majority of the members should be independent, possibly as many as 2/3 of those appointed. Former directors and officers

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of the manager should be precluded from serving as independent members of the governance agency. Independent members should be precluded from owning any shares in the manager. The CSA might also consider whether members of the governance agency should be restricted as to their investment in securities in any of the funds under management of the manager. Ownership of securities of the mutual funds by members of the governance agency may affect their ability to assess conflict issues arising between funds (i.e., inter-fund trading or cost allocations among funds).

14. Are the responsibilities we describe appropriate for a governance agency? If not, please explain why. Have we neglected to mention any responsibilities that should be ascribed to the governance agency? For example, should the governance agency review or approve mutual fund disclosure documents?

In our view, the governance agency should perform three roles as follows:

(a) The governance agency should comment and provide recommendations to the manager as to whether, based on its independent assessment, a specific policy developed by the manager (whether based on regulatory guidelines or industry guidelines) is consistent with the manager's standard of care in respect of the funds (ie. that the policy is in the best interests of the funds). This role should be provided only in respect of policies where the manager requires an independent assessment because there is an actual, perceived or potential conflict between the manager's interest and the interest of the mutual funds. These policies are those addressing:

- soft dollars and brokerage allocation;
- related party transactions and dealings with affiliated entities;
- allocation of investment opportunities; and
- allocation of expenses between funds, among series or classes of the same fund and between the funds and the manager.

(b) In certain limited and discrete circumstances the governance agency should approve specific decisions taken by the manager under the policies set forth above prior to a transaction being executed. This should be limited to transactions involving related parties or dealings with affiliated entities. As well, the governance agency should provide the approval for specific decisions which is currently required to be provided by securityholders. These approvals are those for change of auditor, a less frequent calculation of net asset value and a merger transaction where the funds to be merged have similar investment objectives.

(c) Finally, the governance agency should serve as a check and balance by receiving periodic, such as annual, compliance reporting as to transactions conducted in accordance with the policies set forth above. The imposition of compliance reporting obligations on the manager to the governance agency imposes a discipline on the manager (ie. reporting processes will have to be clearly outlined

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in a procedures manual, trades could not be effected without evidence that the policies had been followed and meticulous reports will be maintained in order to generate the annual report to the governance agency). These types of reports should be required in areas of soft dollars and brokerage allocation, allocation of investment opportunities and allocation of expense issues. This type of compliance reporting also might be applicable for transactions under review in connection with pillar 3 such as inter fund trading.

We do not consider it appropriate for the governance agency to effectively be the final decision maker in shaping the investment strategies of the funds or other key aspects of the business and affairs of the funds. If this type of a role was assumed, then issues of proficiency and liability concerns would cause the cost/benefit analysis of the Proposal to be jeopardized.

Based on the above, our comments below are in direct response to governance principle #5:

(a) In the context of conflict of interest issues, there should be an ongoing ability to obtain information from senior officers of the mutual fund manager.

(b) The governance agency should only be concerned with conflict issues and that written policies and procedures be developed for this purpose. The governance agency would identify conflicts (e.g., items (iv) and (vi)) but should not otherwise approve or monitor compliance.

(c) There should be no immediate requirement to report non-compliance to the regulators. Instead, the governance agency should require the manager to remedy any simple non-compliance. There should not be an expectation that the governance agency report matters to the regulators. This may cause the manager not to be as forthcoming with information as might otherwise be the case. If there was continued non-compliance then the members of the governance agency could resign or refer the issue for dispute resolution where adequate protection is already built in.

(d) The choice of benchmarks is not a matter for the governance agency.

(e) The governance agency should not be required to monitor whether the funds have been managed according to their investment objectives and strategies.

(f) The responsibilities and operating procedures for the governance agency should be established, perhaps in a mandated format prescribed by the CSA.

(g) Of the three listed items, the only one where the governance agency should be involved (i.e., where a conflict of interest may arise) is the removal of auditors and appointment of new auditors. This will obviously require an amendment to NI 81-102 to remove the need for securityholder approval.

(h) The governance agency should only concern itself with conflict of interest issues.

15. Can you think of any other policies and procedures the governance agency should review and approve? For example, should the governance agency review policies on the use of derivatives?

No others.

16. Do you believe the independent members of the governance agency will be effective in their audit committee role?

The Proposal suggests that the governance agency would function essentially as a board of directors for mutual funds, and that the agency would perform audit committee functions similar to an audit committee of a corporate board of directors, including approval of financial statements.

In our submission, the role of the governance agency should be limited only to dealing with situations of conflict of interest. Accordingly, we do not believe that the governance agency, or the independent members of that agency, should have any audit committee responsibilities. More generally, it is our view that the governance agency should not be entrusted to perform any activities of the manager including the approval of the financial statements of the funds. This responsibility should remain entirely with the manager as part of its responsibility over the funds.

17. The Fund Governance Committee of The Investment Funds Institute of Canada (IFIC) recommends that we limit the liability of a governance agency member for breaches of the standard of care to $1 million. In part because members of boards of directors of corporate mutual funds will not have this limitation on their liability we do not propose to regulate any limits on liability. Also, we are not convinced such a limitation is in the public interest. What are your views?

Again, based on our submission that the role of the governance agency should be limited to situations of conflict of interest and that it not function as a board of directors, we do not believe that the members of that agency would or should have the same potential liability exposure that a member of a board of directors would have. As such, the limitation on liability as suggested by IFIC's Fund Governance Committee seems reasonable and prudent.

18. Will a regulatory statement on the standard of care for governance agency members allow potential members to assess their personal exposure in so acting? Will potential qualified members be deterred from sitting on governance agencies?

Where the governance agency has a more limited role, a clear regulatory statement on the standard of care for governance agency members should allow potential members to properly assess their personal exposure. Under this limited mandate, agency members would have greater limits on personal liability and thus make sitting on such agencies more attractive.

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Under the Proposal's broader mandate, it will be more difficult to assess a member's potential exposure due to the vast responsibilities that each will be asked to assume. In our view, potential qualified members will be greatly deterred from sitting on governance agencies under this scenario.

19. If you have experience with a governance agency for your mutual funds, how have you analysed their liability under common law or otherwise? Have you obtained insurance coverage for the members of your governance agency?

Generally, the clients we have canvassed have not analysed the liability of a governance agency. However, they have expressed a concern that if the mandate of the governance agency is broad and unlimited, that it may be difficult to obtain insurance. To curb this possibility, in addition to narrowing the duties of the governance agency, we recommend implementing due diligence defences or "safe-harbour" clauses in the proposal similar to those found in corporate governance.

20. Are there alternatives to the appointment-election conundrum we outline? Is there another practical way for members to be appointed to fund governance agencies?

Having investors appoint the members of the governance agency either initially or at the time of their replacement is not practical. It is our experience that few securityholders either attend or complete proxies in respect of a securityholder meeting, so the election by the investors (the few that attend the meetings) of a governance agency would likely not obtain the intended result of having the governance agency independent of the manager.

The manager has a fiduciary duty to the investors and, under this duty, would be responsible for appointing qualified, committed and independent members of the governance agency. A proposal of having the existing members of the governance agency ratify new members is practical and appropriate.

With respect to the notice to investors regarding new appointments and resignations, we agree that it would be helpful to provide information on new appointments but do not see the value of providing reasons behind a member resignation unless there was some malfeasance (or alleged malfeasance) involved. In addition, we think that noting which members are related to the manager or fund and which are independent would be sufficient. Only if the governance agency does not have a majority of independent members should an explanation as to why the non-compliance occurred be required. Moreover, we believe that investors already receive a large amount of information that they may or may not want. We recommend including this information in the annual information form, or requiring the mutual fund to disclose in its prospectus that information regarding new appointments and resignations is available (along with the annual information form, financial statements and statements of portfolio transactions etc.) by contacting the manager.

21. What do you think about the issues associated with fund managers appointing governance agency members? Are these real or theoretical? If you act on a governance agency and were appointed by the fund manager, please share your experience with us.

In our view, the only practical procedure for assembling a governance agency roster is to have the manager appoint the members and, in respect of replacing or appointing members, having existing members ratify the appointments. Issues regarding conflicts of interest can be curbed through the definition of "independent".

We believe that imposing the additional costs associated with a securityholder meeting is not warranted when the benefit of obtaining an unbiased governance agency can be achieved by the inclusion of an appropriate definition of "independent".

22. Should investors who do not like the elected/appointed governance agency members be allowed to exit without penalty? Do we need to give any guidelines for qualifications of prospective members of a governance agency?

As a preliminary comment, this question implies that the governance agency's role is superior to that of the manager and the portfolio manager. By granting a right to securityholders to leave a mutual fund without "penalty" if they do not approve of a change in the composition of the governance agency, when the securityholder does not have the right to leave without a penalty if the securityholder does not approve of the composition of the manager or the portfolio manager, elevates the governance agency to a level of purported importance that is not supported by its actual authority. If the role of the governance agency is limited to the review of conflict issues, the need for this remedy is further diminished.

In response to the first part of the question, there are two types of fees that are payable upon the redemption of a mutual fund security: (a) short term trading fees, and (b) deferred sales charge fees. Short term trading fees are often payable to the mutual fund itself and are designed to discourage short-term, often opportunistic, purchases that force the mutual fund to incur higher than reasonable transaction costs. This is not a penalty, it is an attempt to allocate the costs incurred by the mutual fund to those who are causing those costs to be incurred. This allocation protects long-term securityholders who otherwise would have to bear the transaction costs created by those who engage in more active investment practices. Deferred sales charge fees are part of a contractual arrangement between the manager of the mutual fund and the securityholder. The sales commission that would otherwise be paid by the securityholder to his or her dealer at the time of the investment is paid by the manager on the securityholder's behalf. The DSC investor, unlike a "front-end load" investor (unless he or she has been able to negotiate paying no commission), benefits from having 100 cents on the dollar invested in the fund. Granting a securityholder the right to redeem without paying redemption fees every time the membership of the governance agency changes undermines this purchase method and would ultimately force managers to eliminate this very popular option.

In response to the second part of the question, under the public company issuer model directors of a public company bring to a board diverse sources of experience in order to represent the various skills required to manage the company and supervise the management of a company. Members of a board of directors often come from professions which are relevant to the management of the company and participate in committees which match the skill set of the director, for example, an independent public accountant typically sits on the audit committee of the public issuer. The same principles should apply to the governance agency and the same flexibility in determining who is qualified to act as a member of the agency should be maintained. Ethical funds may wish to have members of the clergy, political scientists or social activists on their board while an aggressive small cap fund may wish to have a governance agency composed of a large number of investment analysts or participants with business experience in certain industry sectors. Flexibility in determining composition should reflect the diversity of mutual fund products and management styles.

If the role of the governance agency is limited to the review of conflict issues, the need for flexibility remains as individuals from diverse backgrounds will assist in the delivery of a balanced outlook on how to resolve conflict of interest issues.

23. Some people are concerned about the lack of checks and balances on the governance agency setting its own compensation. We do not currently propose to place any limits on the amount or kind of compensation that may be paid to governance agency members. Should we set limits to give guidance to the industry? Should the mutual fund manager be involved in the process of setting the governance agency's compensation or not? Would the independence of governance agency members be compromised if the mutual fund manager set and paid their compensation directly? What do you think about our proposal that the fund manager be given veto power via the ability to call a special meeting to have investors consider any compensation that the fund manager believes is unreasonable?

The boards of public companies have compensation committees which determine the remuneration of senior management and themselves. This information is disclosed with the annual meeting materials which are distributed to all shareholders of the company. At the annual meeting of the public company, the shareholders of the company have an opportunity to make motions, submissions and ultimately approve or replace the board of directors. In the proposed model, securityholders do not have the power to appoint or reappoint members of the governance agency. Annual meetings are not contemplated in the proposal and for the reasons discussed in the proposal, are not considered to be practical or cost efficient. Prescribed limits on compensation may act to distort the appropriate market value of the services provided by members of the governance agency. If the prescribed compensation is too low, qualified candidates will be discouraged from accepting appointments or from dedicating the amount of time required to complete their duties. If the prescribed compensation is too high, a disproportionately costly level of compensation may result when compared to the actual duties of the members of the governance agency for a specific fund or fund group. Prescribed limits may also fail to address the effect liability insurance coverage and administrative costs may have on

compensation. In a free market, compensation is determined after considering the time involved, expertise required or delivered and the personal liability of the governance agency member. Prescribed limits on compensation cannot encompass how the weight of each of these three factors may vary in different mutual fund complexes. As a result it is better that compensation of governance agencies reflect the diversity of structures within the mutual fund industry.

Compensation is also difficult to assess when the personal liability of the governance agency members is unlimited. Prescribed limits on personal liability will make it easier for members of a governance agency to assess risk and obtain adequate errors and omissions insurance coverage.

In the public company issuer model, compensation of directors is disclosed in the annual meeting materials of the corporation. Prospective securityholders of mutual funds currently use management expense ratios and management fees to select mutual funds and mutual fund complexes. When investors select mutual funds with low management expense ratios and management fees, the market has ensured that efficiency is encouraged. Annual disclosure of governance agency compensation will lead to further transparency and support an efficient market-based method for determining compensation. Securityholders have the right to leave a mutual fund through redemption at any time if they are not content continuing to hold their mutual fund for any number of reasons, which could include the compensation paid to the governance agency.

Rather than prescribing limits on compensation, different tools should be used to encourage the determination of reasonable rates. The market should be permitted to influence the determination of this cost. By placing limits on personal liability, members of the governance agency will be able to assess their risk and their appropriate level of compensation. By requiring annual disclosure of compensation, the evaluation of current levels of compensation will be ongoing and market efficiency will be promoted.

We are of the view that independence must be maintained and that all costs allocated to a mutual fund should be approved by the manager of the mutual fund who is vested with the authority to manage all aspects of that mutual fund. A balance should be struck between these two principles. The governance agency needs to be independent, while the manager needs to keep the expenses of the mutual funds it manages, reasonable. Compensation should be set by the governance agency and approved by the manager. If the manager disagrees with the compensation, the governance agency should use the dispute resolution system described elsewhere in this response.

Special meetings are expensive. Any increase in the expenses of a mutual fund is passed on to securityholders and results in lower returns. If there is a disagreement between the governance agency and the manager, including, a disagreement on compensation, the governance agency should employ the dispute resolution system described elsewhere in this response. If this issue cannot be resolved, the members of the agency have the right to resign and issue a notice disclosing the reason for the resignation.

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24. Will the governance agency have sufficient powers in the event of a dispute with a fund manager? Will it be able to discharge its functions properly? If not, can you suggest alternatives for effective dispute resolution? If you do not agree with our discussion on the powers to terminate the fund manager, please explain why you disagree.

The governance agency should have an effective dispute resolution mechanism in place that does not involve expensive and time consuming special securityholder meetings. We have recommended several approaches in our response including securityholder disclosure upon the resignation of members of the governance agency. Whether the process is prescribed by the CSA or recommended by IFIC, the system should encourage flexibility. If no agreement has been reached at the conclusion of the dispute resolution process, resignation, notice and disclosure to securityholders allows those with a direct interest in the affairs of the effected mutual funds the opportunity to assess the bases of the disagreement and, if considered significant, alter their investment decision accordingly. Disclosure is a powerful tool which should only be used when the issue is serious and the disclosure should be approved by the manager or, in the event of a dispute on the disclosure, with the approval of some independent body. This final approval provides a "safe harbour" for the liability of governance agency members because the disclosure is that of the manager, not the agency or its members. When the role of the governance agency is limited and clearly defined, as we have recommended, the opportunity for disputes is substantially reduced. We believe that a limited and clearly defined role, a flexible dispute resolution system, and disclosure to securityholders if an issue remains unresolved, represent the fundamentals of an effective governance process.

The governance agency, as proposed, is not approved, elected or confirmed by the securityholders of the mutual fund. In contrast, the securityholders have selected the manager and continue to do so on each valuation day their investment remains unredeemed in the mutual fund. We agree with the position that the governance agency should not have the power to remove the manager. A review of matters upon which securityholders must vote includes a change of the manager of the mutual fund. Regardless of the authority of a governance agency, any attempt to change the manager of the mutual fund, with or without the manager's consent, must be approved by those who originally selected that manager.

25. What do you think about our suggested approach for dealing with non-performing fund governance agencies or individual members? Do investors or fund managers need any additional powers or information?

In addition to the logistical and cost considerations of meetings, the "information box" pertaining to governance principle #7 questions how a governance agency that oversees all mutual funds in a fund family can ever be elected by the investors in each of those mutual funds. "Asking investors" to replace the members(s) of the governance agency would involve the same issues.

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We should consider giving fund managers the ability to require the governance agency to call a vote with respect to its own membership. As the members of the governance agency have personal liability, this vote may be a solution.

In addition, the members of the governance agency should be appointed for a specified period of time (the appointments should be staggered) and then re-appointed (and re-evaluated) by the remaining members at the end of the term. Members may be elected for an unlimited number of terms.

26. What information do you think investors should receive about the governance agency in addition to, or in substitution for, the information we outline?

The information proposed to be provided to investors in points (i) and (ii) is sufficient.

In our view, however, investors should not receive the disclosure referred to in point (i) in the form of "point of sale" material but rather in the annual information form where similar information regarding the manager and portfolio advisors is more appropriately located. Further, the annual report should list the name of each governance agency member. The details of what is expected by the performance review should be set out. It should be clarified that unresolved issues between the manager and the governance agency (i.e., issues in dispute which are still in the active process of being resolved) should not be disclosed. Please also see response 23.

27. How much time do you think we should allow mutual fund managers to develop their governance agencies?

Assuming the governance agency model outlined in the Proposal is implemented, significant time and resources will be needed to locate qualified individuals who are willing to be a member of the governance board, to set up the procedures of the board, to create education programs and to train the members of the governance board. In our view, a minimum of three years will be required.

28. What kind of training programs do you think will be necessary for fund governance agency members?

Assuming that the governance agency model outlined in the Proposal is implemented, the members of each agency need to be educated and trained appropriately and consistently so that they are able to fulfill their mandate to effectively oversee the mutual fund manager.

An educational and training program for members of a governance agency must provide the members with a thorough understanding of: (1) the applicable laws and industry standards; (2) the specific facts that are relevant to a situation or issue, and (3) how to analyze the law and facts to determine if there is a problem.

The chart below gives broad examples of the education and training that should be provided to members of a governance agency. It lists four categories - the funds, the fund

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manager, the investors, and the governance agency - which would form the basis of the education and training received. Within the framework of those categories, the charts sets out: (1) the reason why that category is important, (2) the applicable laws and standards, (3) the specific facts which the members must determine, and (4) the analysis that members must undertake based on the law and facts.

	Importance of Category	Applicable Laws & Standards	Specific Facts	Analysis
The Funds	The CSA proposes that the governance agency will monitor the funds. Some areas of oversight include determining whether: (a) the funds are being managed in accordance with their investment objectives and strategies; and (b) the benchmarks being used are appropriate.	Governance agency members will need a thorough knowledge of relevant sections of provincial legislation, NI 81-101, NI 81-102 and industry standards.	Governance agency members will need to be educated in the history of the particular funds, the investment objectives & strategies, past performance, limitations on investments, service providers, etc.	Governance agency members need to be trained to: (a) recognize problems in the operation of the fund; (b) recognize deviation from investment objectives and strategies; (c) review prospectus documents and contracts, etc.
The Fund Manager	The CSA proposes that the governance agency will oversee most of the actions of the fund manager, review its policies and procedures, and consider what action to take where there has been material non-compliance by the manager.	Same as above.	Governance agency members will need to be educated in the corporate structure of the manager, financial status, strategic plan, etc. They will also have to become familiar with the employees and key personalities.	Governance agency members must be trained to spot potential problems in any area and analyze financial statements, policies, procedures, contracts, etc.

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	Importance of Category	Applicable Laws & Standards	Specific Facts	Analysis
The Investors	The CSA wants the governance agency to create security and protection for the investors.	Same as above.	The governance agency will need to be educated as to the needs of investors of the funds in order to protect them.	The governance agency members need to recognize what the investors want, their rights, when the interests of investors are jeopardized, and how to solve any problems.
The Governance Agency	The reason for educating the members about the governance agency is obvious – they need to know what to do and how to do it.	The members of the governance agency will need to have a complete understanding of the rules to be implemented regarding their role overseeing the manager, particularly their standard of care.	The governance agency will need to be educated in their structure, number of members, rights and responsibilities, proper procedures, expectations for time spent, compensation, etc.	The governance agency members should be trained in how to resolve any conflicts within the governance agency (both conflicts of interest and personality conflicts), and how to cure any defects in procedures, quorum, etc.

There should not be mandatory training programs or stringent training requirements for agency members. Members should have appropriate experiences and backgrounds for the job, but establishing rigid qualification is not necessary and could be problematic for the following reasons:

1. Costs of training – The investors will be the ones eventually paying for training of agency members.

2. Attracting agency members - How will the need for training be balanced with attracting good people to serve as members of a governance agency? If the training requirements become too onerous, it will be difficult to get anyone to serve as a member of a governance agency. This will be a particularly important consideration for smaller fund managers. If they opt for individual trustees or a board of governors, they may have difficulty obtaining qualified individuals willing to be members in the first place – a problem that will be amplified by rigid training requirements.

These issues again lend support to the more narrowly defined role for the governance agency discussed in response #14.

29. What are your views on registration of mutual fund managers? People have told us that they are concerned our proposals will introduce an additional bureaucratic registration system. If you share these concerns, please feel free to share them with us. However, please understand that our aim is to ensure that the mechanics of registration are as streamlined as possible. We are

most interested in your views on our proposals about the conditions of registration of fund managers.

We do not agree with the Proposal's fund manager registration regime. As "market participants", mutual fund managers are generally under the rule of the regulators. In addition, there is already a mechanism in place by which every regulator has the ability to review the fund manager and the qualifications of directors and officers of the fund manager – through prospectus reviews and issuance of final receipts. Currently, a final receipt is withheld until the regulators are satisfied that all issues with respect to the fund manager are satisfactorily resolved. Registration of fund managers will create unnecessary duplication of duties and requirements. For example, the Ontario Securities Commission performs police checks on the officers and directors of a fund manager in connection with every fund prospectus filing. These checks would be duplicated in connection with the registration process.

In regards to the proposed conditions of registration, we are concerned that the minimum proficiency requirements will be too stringent and too narrow in focus. There needs to be flexibility for individuals with alternative, non-traditional experience. The issue of outsourcing by fund managers also needs to be addressed. Why should directors and officers of the fund manager be required to conform to certain requirements if they are outsourcing to individuals who already meet or exceed those requirements?

30. The Fund Governance Committee of IFIC recommends that the fund governance agency be responsible for considering the qualifications and proficiency of management. If the governance agency does not believe the fund manager has the right people to undertake the task of managing the funds, it should require changes. If the fund governance agency has this power, the Committee submits that we do not need to impose regulatory standards.

We do not agree with the assertion that the fund governance agency should take on this role. Our registration system for advisers and dealers sets out standards for their officers and directors and we think similar requirements should apply to fund managers. We think the governance agency should be responsible for overseeing the management of mutual funds, not for assessing the adequacy of senior management and the directors of the fund manager. Do you have any thoughts on this matter?

We agree that the regulators, and not the governance agency, should be responsible for assessing the adequacy of senior management. However, we think that regulators can already assess the adequacy of senior officers and directors of fund managers without imposing a manager registration regime. The integrity of those individuals is already under regulator scrutiny under the current regime of prospectus reviews and issuance of receipts as discussed elsewhere.

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31. Do you believe a minimum capital requirement is justified? What do you think about the three options that have been recommended to us? Can you suggest an alternative option?

In addition to our reservations about manager registration at first instance, we are concerned about the minimum capital requirements discussed in the Proposal, especially in light of the reasons given by the CSA for this condition of registration.

No procedure has been provided for calculating the minimum capital required. In our view, the CSA proposal for minimum capital does not serve a business purpose, but rather appears to be a form of indirect taxation on large firms and a deterrent or prohibition on small firms entering or remaining in the mutual fund industry. We are not sure how the link to the amount of assets under administration and capital requirements was established.

We believe that investor protection is needed to protect against a mutual fund manager's insolvency, however, we question whether a minimum capital requirement is the correct route for such protection.

The "three options" are, in our view, too onerous and not workable. For example, suppose sales go up dramatically, then theoretically, the capitalization requirements would also go up dramatically, and at the same time the fees paid to dealers would go up proportionately, all of which serves to place enormous pressure on the fund manager. The question still remains, where is the benefit to the investor? Such increased pressures on the fund manager would merely drive costs up for the investor with little or no demonstrable benefit.

Capital is obviously required to ensure adequate financial resources to meet business commitments including staffing, systems and services and equipment, satisfy legal claims, risk of collapse. However, merely requiring high levels of minimum capital does little to ensure that capital will be properly allocated by the manager anymore than is allocated under the current regime.

In terms of alternatives, perhaps more thought should be given to the creation of a contingency fund program for mutual fund managers, with minimal cost to the fund. After consultation with the industry, across the board minimums could be established and used in conjunction with this contingency fund. However these minimums should be more in line with the amounts currently required for other securities market participants. For example, in Ontario, investment counsel/portfolio managers are required to maintain a minimum capital of $5,000 where non-discretionary management is provided, or up to $25,000 where discretionary management is provided. The levels discussed in the Proposal are far beyond these amounts.

32. Is our list of insurable risks complete? We will need to determine the appropriate minimum levels of coverage for the insurable risks. Can you offer us any guidance on this matter?

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If the Proposal's manager registration model were imposed, the CSA should consult with professionals in the insurance and actuarial industries to better determine whether the list of insurable risks is complete and appropriate minimum levels of coverage.

33. Is our list of essential internal controls complete? Do you think our proposal for an auditor review of internal controls is necessary? Why or why not? Do fund managers today routinely ask their auditors to conduct this review?

If the Proposal's manager registration model were imposed, we think that the internal control requirements should be equivalent to those required for investment counsel/portfolio managers.

Auditor review of internal controls is not necessary. Compliance personnel are responsible for the day-to-day activities of the fund and should be well positioned to identify a potential problem before it becomes a major problem, and draw it to the manager's attention for appropriate corrective action. Requiring an auditor to review the internal controls adds yet another layer of costs for the consumer, with limited benefit.

34. It has been suggested to us that the CICA provisions respecting Section 5900 Reports may be of assistance in discharging regulatory obligations of the fund manager to satisfy itself, and demonstrate on an ongoing basis, that a third party service provider is competent to fulfil the functions in question. Independent external auditors would perform this audit and the report would be filed with the manager and regulators. Do you believe a Section 5900 Report would be useful in this context? Why or why not?

If the Proposal's manager registration model were imposed, we submit that an auditor's report on the control procedures in place at third party service providers should not be mandatory for fund managers. Such audits are very costly and may result in an increase in management expenses, which will be indirectly borne by investors. Given that subsection 4.4(2) of 81-102 imposes liability upon a fund manager for "any loss that arises out of the failure of the manager, or of any person retained by the manager or the mutual fund to discharge any of the manager's responsibilities to the mutual fund", we submit that mandating an audit of a service provider is unnecessary. The result of subsection 4.4(2) of 81-102 is to impose responsibility upon the manager to determine the best possible manner in which it may fulfill its fiduciary obligations to the fund. It should be left up to the discretion of each fund manager to determine whether it needs the "added comfort" of an audit of its service providers.

35. Can you think of any other minimum standard that should apply to fund managers as a condition of registration?

If the Proposal's manager registration model were imposed, we do not believe that any further standards or conditions of registration should apply.

36. Please provide us with your views on how we can best achieve our objectives of re-evaluating product regulation. What changes are most important to you

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and why are they important? What aspects of product regulation do you think cannot be changed?

We are reluctant to comment upon product regulation without a more comprehensive proposal that details how the CSA would otherwise restructure and streamline the existing regulatory framework.

37. Is it realistic to expect that the governance agency will ensure the manager complies with its policies on such matters as related-party transactions? Can this approach replace the current conflicts of interest rules?

In our view, the governance agency can serve a valuable function in connection with related-party transactions. We do not believe, however, that the role of the governance agency should be to ensure the manager complies with its policies on related-party transactions. Rather it is our view that the governance agency should initially review policies on related-party transactions that are developed by the manager and make recommendations as to whether such policies are in the best interests of investors.

In addition, there may be certain circumstances in which it is appropriate for the governance agency to play a more passive role. In this role, they would receive periodic reports from the manager attesting to compliance with related-party transactions. An example of this role is the U.S. model with respect to inter-fund trading; one of the conditions of doing inter-fund trading in the U.S. is the requirement to report to the board on the trades completed, together with the back-up which shows compliance with the other conditions (i.e., obtaining independent price quotes, etc.). In the appropriate circumstance, this periodic reporting to the governance agency will impose a discipline on the representatives of the manager to ensure compliance with the relevant policies (e.g., inter-fund trading, to obtain the requisite number of independent quotes from acceptable sources, document this information, and incorporate the information into a sufficiently detailed report).

We believe the approach as outlined above can be used to replace certain of the current conflicts of interest rules as the governance agency would provide an independent assessment of whether, notwithstanding the related aspect of the transaction, the type of transaction is in the best interest of investors.

38. What are your views on the specific areas that we are re-considering? Are there other changes we should consider in the area of investor rights in light of our proposed renewed framework? Do we need to consider defining additional rights for investors?

We strongly favour a re-examination of the use of investor meetings for fundamental changes. It is our experience from assisting clients with many meetings over the years that a significant number of investors do not exercise their voting rights and thus the process is ineffectual. It is also very expensive and in most circumstances, it is the investors who ultimately bear this expense.

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We would very much encourage the CSA to use the governance agency as a "proxy" for the securityholders in respect of certain types of change which currently require securityholder approval. The governance agency could review proposals for fundamental changes by the manager and make recommendations as to whether they agree that the changes proposed are in the best interests of investors.

We are concerned about the possibility of the introduction of dissent rights for fund investors which would include a right to avoid the payment of any fee on redemption which would otherwise be payable. If investors are not satisfied with the position of a fund or its manager, investors are permitted to redeem their securities generally on each day at their then current market value (net asset value). In essence, investors inherently have a "dissent right" which is the equivalent of the dissent right provided under corporate law for investors in corporations generally; in these other scenarios the dissent right is required because the investor may not otherwise have an exit from his/her investment at a fair value. Since mutual fund securityholders already have the right to redeem at their option at net asset value no corresponding additional regulatory right is required. This should be the sole mechanism for dissent. In essence, each investor in a mutual fund is entitled to vote with his or her feet.

As previously stated, we submit that it would be inappropriate for the CSA to interfere with the contractual arrangements between the investor, the manager and the fund with respect to short-term trading fees and DSC redemption fees.

39. Upon reading the staff research paper, what are your views on the costs of our proposals versus the benefits? Should we take into account other costs? Other benefits?

We are concerned about the cost/benefit analysis contained in the Proposal. In the Proposal you state that "it is important to us that the benefits of our proposed changes outweigh the potential cost". It is very difficult for us to assess whether that objective has been met for the following reasons:

1. Although the Proposal details the section of reform which will increase cost (governance and registration), there is no detail with respect to the benefits (product regulation and investor rights). We feel that a proper cost/benefit analysis cannot be made until both the cost and the benefit side of the Proposal have been detailed.

2. As currently stated, the cost analysis does not include all aspects of cost created under the Proposal. For example, the Proposal includes a number of new disclosure obligations to investors in respect of the governance agency such as in connection with compensation arrangements, appointments, termination etc. The cost analysis does not attribute any cost to the preparation, translation, printing and mailing of these materials.

3. We have also had input from our clients that certain costs are understated. For example, we have been told that co-ordinating meetings of the agency, arranging

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reporting to the agency and otherwise ensuring all of the needs of the agency are met will require extensive staff resources. For larger fund complexes these functions could represent a full-time job, perhaps for several people. Yet no cost has been allocated for this purpose in the Proposal.

What is clear from the Proposal is that the costs of implementing the Proposal are extensive. What should be clear, therefore, is that the benefits, once they are defined, need to also be extensive if the objective of having the benefits outweigh the risks is to be achieved. We therefore, encourage the CSA to look beyond product regulation and investor rights for these benefits. Some area for consideration may include increased harmonization with resultant extension of the mutual reliance regime, or alternatively the pursuit of a national securities regulator and reconsideration of the need to deliver extensive prospectus disclosure documents to investors.

Finally, because the costs are extensive, we are very concerned about the impact of the Proposal on our smaller mutual fund clients. Many of these clients have indicated to us that the Proposal will "put them out of business". We are concerned about the effect this may have on niche products or mutual funds designed for a discrete (and relatively small) niche market. This is why we echo the importance of ensuring that the benefits of the Proposal outweigh the costs.

Yours truly,

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