



HOWSON TATTERSALL
INVESTMENT COUNSEL LIMITED

SUITE 1904, P.O. BOX 95, THE CADILLAC FAIRVIEW TOWER, 20 QUEEN STREET WEST, TORONTO, ONTARIO M5H 3R3
TEL (416) 979-1818 FAX (416) 979-7424

RICHARD D.W. HOWSON, C.F.A.

ROBERT TATTERSALL, C.F.A.

July 10, 2002

Canadian Securities Administrators
C/o Ontario Securities Commission
20 Queen Street West, 19th Floor, P.O. Box 55
Toronto, M5H 3S8

Attention: John Stevenson, Secretary

Re: Concept Proposal 81-402
“ A Framework for regulating Mutual Funds and their Managers”

Dear Sirs:

We are writing in response to your request for comments following the publication of the Concept Proposal listed above. As background, it may be helpful for you to know that Howson Tattersall Investment Counsel Limited, (or its predecessors), has been registered with the OSC as Investment Counsel and Portfolio Manager since 1962. In 1985, we added the Mutual Fund Dealer registration in order to sell our Saxon family of no-load mutual funds which were offered to the public in December 1985. At present, Howson Tattersall manages approximately \$1.2 billion in assets on a discretionary basis for private clients, pension funds, institutional accounts and our \$300 million Saxon no-load mutual fund family.

Of particular relevance to this Concept Proposal is the fact that Saxon Mutual Funds is one of a relatively small group of funds that uses individual trustees rather than a corporation to fulfill this role. Furthermore, two of our five trustees would qualify as independent by most definitions and these two constitute a majority of our three-person audit committee which approves the fund financial statements. This structure has been in place since the inception of the funds in 1985, so we appear to be on the leading edge of Canadian mutual fund

governance in some respects. The following comments, therefore, reflect our practical experience as a mutual fund manager rather than a commentary on the legalities of the proposed structure.

1. It is not clear in our mind that there is a major problem to be addressed which requires the creation of a whole new regulatory infrastructure. Unless there is evidence of widespread abuse that has not been disclosed, we see no reason why the current regime could not continue to handle the occasional problems that have been made public. Consistency with other international regulators is a laudable objective, but should not be the driving force behind a project of this magnitude. This effort at international consistency might be better devoted to developing a national securities regulator.
2. We believe that if the CSA has a concern about certain governance issues regarding mutual funds, these issues can be addressed by requiring disclosure of the relevant policies and procedures. Potential investors can then decide what importance, if any, to place on these topics before investing. This presupposes, of course, that investors actually read much of the mandated disclosure which they currently receive. It is our observation that many Saxon unitholders have made the decision to invest with us without contacting us directly and so presumably have not read the prospectus, AIF or other official disclosure document. As a no-load fund group, we can be sure that there were no high-pressure salesmen in the equation. These investors simply made use of the wealth of free analysis and rankings of fund groups which occur in the monthly fund surveys, various web sites and the books which appear during RRSP season. These sources provide performance rankings, MER levels, volatility measures, manager profiles, manager turnover/terminations etc. We believe that adequate disclosure coupled with a vigorous business press currently provides a high level of mutual fund governance.
3. We agree, however, that the role of the Mutual Fund Manager deserves more scrutiny. The Manager often decides on the type and structure of the fund to be offered to the public, prepares the documentation, hires the adviser and orchestrates the road show. In aggregate, these activities represent the implied endorsement of a specially created investment product, which should require a minimum level of expertise. Instead of creating a whole new category of registrant, why not simply require that a mutual fund manager be registerable as Investment Counsel/Portfolio Manager? This is a reasonable expectation in terms of skill levels and would be extremely simple to implement.

4. As a corollary to the previous comment about the proposal to create a whole new registration category, we strenuously object to the idea that a manager would be required to employ at least four officers with different functional responsibilities. Saxon Funds has provided above average returns to its clients at below average costs and we still don't have four officers. This requirement would simply be a barrier to entry for smaller fund groups, many of which provide innovative products or specialty services.
5. We have a similar reaction to the proposal for a minimum capital requirement of \$1 million or more for a mutual fund manager. If the intent is to provide financial protection to unitholders, then minimum levels of insurance coverage would better achieve this objective. There is no economic necessity for a manager to invest more capital as assets under administration grow. It would be especially punitive if a strong performing mutual fund were obliged to close the fund to additional investors due to capital strain, while a deep-pocketed competitor with an indifferent track record could keep selling.
6. After having nurtured the Saxon funds from a zero asset base in 1985 to the current level of \$300 million in assets, we do not favour a structure where the trustees could call a meeting to expropriate the value of this corporate asset. More importantly, we think that the Concept Paper confuses the role of unitholders with that of shareholders. Investors in a mutual fund may own the assets of the fund, but they are clients of the fund company. In no other business situation do the customers have the right to hire and fire the managers. If they are not happy with the product or service received, they have various rights of redress ranging from a full refund, to a repair, to a lawsuit. It is the shareholder of General Motors, not the buyer of a Pontiac, who votes on the tenure of management. The situation for a mutual fund is no different.
7. As a practical matter, we cannot conceive of a situation where it would ever be in the unitholders' interest to follow through with a trustees' proposal to terminate the manager. In a corporate structure, it is true that problems of market liquidity, oppressive conduct by management, or a fear that "money is being left on the table" will often prompt a proxy battle to gain control over residual corporate assets. In a mutual fund, investors can redeem at net asset value every day. As long as this is fairly stated, there is no incentive to stick around for a new management team because they will be dealing with exactly the same book of assets.

8. Finally, we suspect that it will be very difficult and expensive for a small mutual fund group to recruit independent trustees to fill the desired role. We only “suspect” this because Saxon Funds has had only two trustee changes in 17 years (one death and one retirement), so we don’t have recent experience. This cost could easily run into several hundred thousand dollars as the independent trustees would likely demand more extensive internal reports and seek independent counsel more frequently. To date, Howson Tattersall as manager has always paid all legal, audit, custodial and trustee fees out of its management fee so that our management fee is also our MER. The proposed governance structure would be outside the scope of our management activities and so we would charge the fund directly for these services. At an estimated \$300,000 per year, (based on the cost analysis provided in the Concept Proposal document), this would reduce our clients’ return by 10 basis points. Given a choice, we believe that most clients would prefer the 10 basis points.

More importantly, the cost analysis on page 29 of the Concept Proposal indicates a huge differential in favour of larger fund groups. Their unitholders would see a fee increase of 2 basis points compared to 18 basis points for small fund managers. We recognize there are certain economies of scale in any industry, but this represents a major barrier to entry to new fund managers and creates a significant performance burden for existing small managers.

Please feel free to contact either one of us if you have any questions about the contents of this letter.

Yours very truly,



Robert Tattersall
President, Howson Tattersall Investment Counsel



Richard D.W. Howson
Executive Vice-President, Howson Tattersall Investment Counsel