



August 29, 2002

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

c/o Commission des valeurs mobilières du Québec
800 Victoria Square, Stock Exchange Tower
P.O. Box 246, 22nd Floor
Montreal, Québec
H4Z 1G3

Attention: Mr. John Stevenson

Attention: Ms. Denise Brousseau

Dear Mr. Stevenson/Ms. Brousseau:

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").

In general Acuity Funds Ltd. ("Acuity") believes the current regulatory framework has served both the industry and investors very well over a sufficiently long period of time to demonstrate its proven capabilities. No one would disagree with the notion that this framework is not perfect, but we think that modest fine-tuning in a few areas would help to resolve some of the inadequacies.

Unproven, sweeping regulatory change, such as you have proposed, runs the risk of creating unpredictable situations with undesirable consequences that could be serious for the industry at large, for smaller industry participants in particular, and generally not in the best interests of investors.

While your Proposal contains a number of positive recommendations, Acuity believes small, incremental change, provided it leads to more simplified, cost effective and flexible regulation, is the safer and more appropriate approach. We are concerned that your Proposal superimposes massive, unnecessary and imprecise regulation, at great cost, on an industry that is already highly regulated and generally functioning very well.

Acuity would like to formally **endorse and support the response submitted by Borden Ladner Gervais, (BLG)**. BLG has been our legal counsel for a number of years and were kind enough to allow us to review their response. Thus we will not repeat their well thought out comments but will provide you with a few specific reservations from a smaller fund company perspective.

ACUITY
FUNDS LTD.

*Acuity Mutual Funds
Clean Environment
Mutual Funds*

65 Queen Street West, Suite 1800
Toronto, ON M5H 2M5 Canada
T 416.366.9933 / 800.461.4570
F 416.366.2568 www.acuityfunds.com

885 West Georgia Street, Suite 1500
Vancouver, BC V6C 3E8 Canada
T 604.609.9919/888.903.7999
F 604.609.9929

Strong Alignment of Interests – Fund Managers and Fund Investors

Canada's mutual fund industry is highly competitive. Unique objectives or decision-making processes, good investment results, reasonable costs, efficient reporting and administration are all important to investors and mutual fund companies alike. Companies that do not meet the competitive test simply do not succeed. The interests of both parties is already greatly aligned. We do not believe, as your proposal has insinuated, that there is an inherent conflict of interest between the interests of the investors and those of the mutual fund company.

There is currently in place a great deal of governance with the members of each mutual fund company's Board of Directors (including independent members), oversight by the auditors, oversight by internal compliance/audit work programs, oversight by independent rating agencies and investment analysts at independent investment dealers, oversight by independent financial advisors (particularly for load fund companies), oversight by the regulators in surprise field audits, and finally oversight by the investors themselves who in our experience never shy away from voicing their opinions or voting with their feet (there is after all virtually immediate liquidity available for all mutual funds if requested). To create further oversight is unnecessary.

Expropriation rights?

Furthermore, each mutual fund company has spent a great deal of time, effort and capital to establish, market, manage and promote their own family of funds. Each company owns the rights to the earnings stream provided by the assets in each mutual fund. To create a new governance body and provide it with the power to expropriate assets by terminating the manager is unconscionable.

Unhappy or wronged consumers in all industries have various rights of redress but that does not include the right to fire the management of the company they are unhappy about. Only shareholders have that right. Unit holders in a mutual fund are clients (customers) of the fund company, not shareholders in the same fund company. Only shareholders in the fund company should have the right to terminate a manager.

Costs outweigh benefits/penalties to smaller firms/barriers to entry

It is our belief that the costs associated with the proposed governance structure significantly outweigh the benefits to investors. Furthermore, the economic analysis set out in your Proposal substantially underestimates the total cost associated with the adoption of the Proposal. We suggest that mutual fund investors, given a choice, would not support your proposed governance regime given this cost-benefit trade-off.

In addition, the cost to smaller firms would be disproportionately much higher. Although the costs will ultimately be borne by the investors, which in and of itself is distasteful, there is a limit to what will be tolerated by investors before they choose other fund companies. The smaller fund companies will become less competitive, and ultimately face forced consolidation where the "larger" consume the "smaller" leading to domination by large domestic and foreign mutual fund companies.

This disproportionate cost structure will also create significant barriers to entry for new small fund companies, shut down innovation which often first appears in smaller companies with niche or theme funds, and ultimately not be in the best interests of the investing public.

Minimum capital requirements

We believe there is no justification for a change in the minimum capital requirements. All investors' assets in mutual funds are held in safekeeping in large financial institutions and thus are "safe" from theft or other wrongdoing. Investors currently have access to their invested capital virtually immediately. Increased costs associated with the increase in minimum regulatory capital would ultimately be passed on to investors, also not desirable.

There is a punitive side to your proposal. The increase in minimum capital requirements would create a very significant barrier to entry for smaller firms and could result in less innovation. Furthermore, rapidly growing fund companies with superior investment track records would be required to increase their capital or be forced to close their funds to additional investors due to capital inadequacies. This could also result in forced consolidation. Any one of these consequences would not be in the best interests of investors.

Acuity provides an important perspective on your Proposal from a smaller fund company position. Thank you once again for the opportunity to present our comments. I would be pleased to discuss our concerns with you in greater detail at your convenience.

Yours truly,

Ian O. Ihnatowycz
President and Chief Executive Officer
Acuity Funds Ltd.