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PERFORMANCE THROUGH INNOVATION

BARCLAYS GLOBAL INVESTORS

December16, 2002

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
Ontario Securities Commission
Securities Administration Branch, New Brunswick
Office of the Attorney General, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Government of Yukon
Registrar of Securities, Legal Registries Division, Dept. of Justice, Government of Nunavut

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, ON M5H 3S8
jstevenson@osc.gov.on.ca

- and -

Denise Brousseau, Secretary
Commission des valeurs mobiliéres du Québec
800 Victoria Square, Stock Exchange Tower
P.O. Box 246, 22nd Floor
Montreal, Québec H4Z 1G3
consultation-en-cours@cvmq.com

Dear Sir and Madam,

Re: Request for Comments: Proposed National Instrument 81-106 and Companion Policy 81-106CP Investment Fund Continuous Disclosure, and Form 81-106F1 Annual and Quarterly Management Reports

We at Barclays Global Investors Canada Limited (BGI) thank you for your invitation to comment on Proposed National Instrument 81-106 and Companion Policy 81-106 – Investment Fund Continuous Disclosure, and Form 81-106F1 – Contents of Annual and Quarterly Management Reports of Fund Performance (the "Proposal"). We are strong

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believers in the value of meaningful dialogue between regulators and industry participants and commend the Canadian Securities Administrators for the thorough public consultation they have undertaken in connection with the Proposal.

BGI, which currently manages over $40 billion in assets, is one of Canada's largest and fastest growing investment managers. We are not the manager of any traditional mutual funds but do manage the iUnits family of exchange-traded funds and use non-prospectused mutual funds ("pooled funds") to a fairly significant extent in our core business of providing investment advisory services to Canadian pension funds and other institutional investors. BGI is part of a global investment management business that manages over a trillion dollars in assets and we therefore have very broad experience in regulatory approaches applied to this industry, including mutual fund governance regimes. While we have an interest in the impact the Proposal may have on the Canadian mutual fund industry as a whole, our comments will primarily focus on the potential impact of the Proposal on pooled funds and exchange traded index funds (ETF's).

Within the retail mutual fund industry, we believe that the Proposal contains a number of what appear to be very sensible suggestions. We do however have a number of concerns with the Proposal, particularly as it applies to other areas of the "investment fund" industry. Before turning to our responses to the specific questions asked in the request for comments, we address in a more general way our view of the analysis that should precede the implementation of any regulatory initiative and how that view should be applied in the context of the Proposal.

General Comment

We believe that in general regulation of the capital markets is only appropriate when (i) there is an asymmetry of information between market participants (most commonly between investors and other market participants) and necessary information can be made available most efficiently through the establishment of regulatory "ground rules" or (ii) conflicts of interest exist. One or both of these criteria of market failure are met in certain areas of Canada's mutual fund industry and that the CSA has a very important role to play in the proper functioning of the industry by identifying and enforcing the most effective and efficient means of addressing these issues. Where an asymmetry of information exists, we believe that effective disclosure is generally a more effective regulatory approach than prescriptive regulation. The areas in which either of these criteria apply are fairly limited, particularly for certain types of mutual funds, and regulators should ensure that proposed disclosure requirements effectively target one of the criteria set out above and do not introduce new disclosure requirements that do not address these criteria.

As noted above, areas may very likely exist within the Canadian investment fund industry in which there are asymmetries of information and more effective continuous disclosure would presumably be an appropriate way to address these asymmetries. However, three important points must be considered at the outset.

- First, the Proposal does not refer to any analysis by the CSA of the following questions:
    - (i) Are there are actual asymmetries of information (or any other specific policy concerns) with the existing disclosure regime?
    - (ii) If so, in which areas?
    - (iii) In any such areas, does the Proposal propose the most effective means of addressing such asymmetries or other concerns?

  In a variety of other areas, including mutual fund prospectus disclosure for example, the CSA appear to have accepted that "more" is not necessarily "better" when it comes to disclosure. Unfortunately, the Proposal seems to assume that "more" is in fact "better" in the area of continuous disclosure. We do not believe that to be the case. More effective disclosure in some areas may very well be appropriate but we think that a serious analysis of the three questions set out above should precede any proposal that would lead directly to increased costs for investors.

- Second, any such asymmetries or other concerns are unlikely to apply universally across the industry. Two examples are "pooled funds" (mutual funds not qualified by prospectus, the units of which are distributed in reliance upon prospectus and registration exemptions) and "index funds".

  Pooled Funds
  Institutional investors and their consultants are on a very level playing field with the managers of pooled funds who utilize these funds in providing investment advisory services to their clients. It is unlikely that any value whatsoever would be added through the introduction of a "one size fits all" approach to disclosure in this part of the industry. Currently, disclosure is dealt with for the most part as a contractual matter between sophisticated parties. Most advisers that use pooled funds meet regularly with their clients in person to review fund performance and, in many cases, managers contractually agree to be measured against established benchmarks. In many cases the investment management agreements entered into between the fund manager and the client require the fund manager to provide a variety of regular reports to the client as well.

  From the exemptions available to pooled funds from the requirements of many parts of the Proposal, it appears that the CSA understanding of the manner in which pooled funds are used. However, such funds are not exempt from all parts of the Proposal but there is no discussion as to why this is the case. For example, Part 7 of the Proposal contains very specific financial statement requirements that apply to both retail mutual funds and pooled funds but which incorporate requirements that currently apply only to retail mutual funds. While the CSA may have some concern with the financial statement information currently being delivered by pooled fund managers to their clients, this concern is not identified in the Proposal. Further, as noted, the institutional investors in these funds are very much on a level playing field with the pooled fund managers and could quite simply negotiate additional or

different financial disclosure than that with which they are now provided. We are not aware of any concern raised by these clients with the existing financial statement disclosure. Given all these facts, we question why the CSA is proposing to implement detailed financial statement requirements in respect of pooled funds in addition to retail funds where investors are clearly not able to negotiate all such matters..

Index Funds
Similarly, investors in index mutual funds (particularly exchange traded index funds) that track broad, widely recognized indices do not need the same mandated level of disclosure to appropriately understand their investments as would investors in active funds where the actual investment portfolio and expense structure is not transparent. All of the portfolio disclosure information for example is irrelevant where the fund simply tracks a permitted index. In addition to the transparency arising as a result of the tracking of an index, many of these funds, including our own iUnits exchange traded funds, post their portfolio holdings daily. One of the values of such index funds is their relatively low expense and proposing a regime that would introduce additional costs without adding any real value cannot be justified.

- Finally, we have concerns with the timing of the Proposal. The Proposal introduces the concept of "investment funds" into regulation for the first time. While that term has been introduced into Ontario Securities law by virtue of Bill 198 which was passed on December 9, 2002, we are concerned that its inclusion in the Proposal is premature. We understand that the Ontario Securities Commission is, in consultation with industry participants, undertaking a review of the manner in which pooled investment vehicles are regulated and that this review includes a consideration of whether regulation of "investment funds" is an appropriate approach. Further, many industry participants and organizations have argued quite persuasively in respect of other regulatory proposals that registered advisors simply utilize pooled funds as one of many tools in providing investment advisory services to their clients and that it is the advisers, not these "tools" which should be regulated. We have some sympathy for this perspective and, at a minimum, feel that implementation of a disclosure regime based on this approach should await the outcome of the analysis as to whether the approach should be adopted more generally.

  In addition, we understand that there are a number of other regulatory processes currently underway, the conclusions of which could have a significant impact on areas addressed in the Proposals. For example, the Joint Forum of Financial Market Regulators is in the process of developing guidelines that will address, amongst other things, disclosure requirements for funds sold to capital accumulation plans. The conclusions reached by the Joint Forum should be considered prior to

implementation of a Proposal that may complement, but is just as likely to contradict, them.

Specific Comments and Response to CSA Questions.

CSA Question 1 - Management Reports of Fund Performance

"The CSA invite comments as to whether the quarterly management reports of fund performance will achieve the goals that they are intended to achieve. Shold there be more or less frequent disclosure of fund performance information and why? Should there be quarterly reporting for all investment funds? Does the proposed type of information allow an investor or an adviser to make informed investment decisions?"

The Goals of MRFP: The Proposal states that the "*purpose of the quarterly management report of fund performance is to provide up-to-date information about the fund to current and prospective investors and to advisers and dealers who analyze funds and recommend them to their clients.*" The Proposal will likely achieve this goal as up-to-date information will in fact be provided. As discussed in our general comments above however, we don't believe that increased disclosure for its own sake is a sufficient goal for any regulatory proposal and we assume that the CSA expect that the Proposal will accomplish something more substantive than simply the provision of information. Given the absence in the Proposals of a description of the specific shortcomings of the current system and any analysis as to why the Proposal embodies the most efficient means of addressing those shortcomings, it is difficult to provide a view as to whether the Proposal will achieve any specific substantive goals. As a result, in many of our comments below we set out what we "assume" are the deficiencies the Proposal is intended to address.

The final question asked by the CSA on this point is more relevant when it asks whether the proposed type of information allows an investor or an adviser to make informed investment decisions. This recognizes that the goal is informed decision making, not information for its own sake. However, the Proposal does not refer to any analysis as to whether the proposed type of information is "necessary" or "helpful" or "better than existing information" or "worth the increased cost" for investors or their advisers in making investment decisions.

As noted, we hope we can assume that there are in fact specific concerns that gave rise to the CSA's initiative in releasing the Proposal and that the Proposal's contents were seriously considered before being released. Public dissemination of those concerns and a more thorough discussion of any alternatives considered would enable industry participants to provide much more substantive comments as to the likely efficacy of the Proposal in addressing those concerns.

Frequency of Reporting: Though it is not explicitly stated in the Proposal, we assume that it reflects the CSA's view that the current practice of relying on the prospectus and the annual and semi-annual delivery of full financial statements is not providing investors with the optimal package of information for purposes of making investment decisions and we agree that this is likely the case. It is commonly acknowledged that there is a high level of disinterest amongst investors in much of this information. While we believe that it would be prudent to undertake a thorough analysis and not rely on such "common understandings" we expect that at least part of this disinterest results from the detailed and expansive nature of the information that is currently being provided. The proposed Management Reports contemplate a summarized and more focused form of reporting and we agree with this concept. We also support the idea of providing such information, and the more complete financial statements, to investors who expressly request them. However, we fear that requiring more frequent (quarterly) reporting could focus more attention on portfolio holdings and performance at a given moment in time than is warranted and encourage an inappropriately short-term investment perspective. Any move to more frequent reporting should only be made following a persuasive demonstration that the benefit outweighs the potential costs of investors adopting a shorter term perspective (including higher trading fees and/or commissions) and the costs of preparing additional and more frequent reports.

CSA Question 2 – Financial Statements

Do the financial statement requirements meet the needs of users? Does the amount of detail proposed assist with the preparation consistency and comparability of the financial statements? Is the Proposal too detailed? Is more detail or specific direction necessary? Should all investment funds be required to prepare and file quarterly financial statements?

As noted above, it is widely assumed that a mutual fund's financial statements are not often relied upon in the existing investment decision-making process. The Proposals would seem to indicate that the CSA believes that:

- the complexity and broad scope of mutual fund financial statements may be a contributor to this problem (hence the proposal for summary financial information in the MDFP);
- the length of time following the end of a financial period before the financial statements are filed and delivered to investors may contribute to this problem (hence the proposal to reduce these time periods); and
- many investors may just not want the financial statements at all (hence the proposal to require that financial statements only be delivered to investors requesting them).

We strongly support the proposal that financial statements should only be delivered to those investors that request them and believe that it addresses the first and third assumptions set out above. There would clearly be no new cost imposed by this proposal and there will definitely be savings realized by many mutual funds.

We do however have some concerns with the shortened time periods in which financial statements must be prepared. While the raw data that forms the basis of financial statements will be available almost immediately following the end of the relevant financial period, a significant amount of work goes into preparing and delivering the actual statements - in addition to fund company staff, third parties for whom the current time periods have proven challenging and over whom fund companies exercise no direct control play a pivotal role. In the absence of any direct evidence that providing financial statements within the proposed time periods would materially improve the ability of investors to make investment decisions, we would strongly urge the CSA to retain the existing time periods, particularly with respect to interim financial statements.

The CSA requests comments on whether funds should be required to prepare and file quarterly financial statements in addition to the MRFP. Even in the absence of the MRFP we do not believe that quarterly financial statements are necessary. In the absence of any empirical analysis concluding otherwise, we would not expect that the reductions in the time periods in which it is proposed financial statements be required to be prepared will have a material impact on extent to which investors rely upon those financial statements in making investment decisions. As a result, the doubling of the frequency with which financial statements are required to be prepared would appear entirely unwarranted. Further, unlike public companies, all mutual funds already release important fund information by determining and providing the fund's net asset value on a daily basis – investors are not reliant upon these statements to determine the value of their investments at any given time.

CSA Question 3 - Disclosure of Risk and Volatility

Should there be disclosure of the fund's best and worst quarter returns or disclosure of the correlation of the fund to a benchmark index? Is there additional disclosure that would provide useful information to the investors and advisers?

The Proposal contemplates that the MRFP will include disclosure of how material or significant changes to a fund have affected the overall level of risk associated with an investment in the fund. We believe that discussions of "risk" and "volatility" are often misunderstood and that there is no settled consensus as to what the best measures of risk and volatility are. The additional disclosure contemplated by the Proposal will result in a variety of inconsistent, and inconsistently measured, approaches to determining a funds "risk" and the impact of different events on that determination. As a result, the disclosure is unlikely to be of any significant use by an investor in making an investment decision and may in fact make it more difficult to compare otherwise similar funds. If any "risk" or "volatility" measure is to be used, we would suggest that simply comparing a fund's performance with a relevant benchmark over prescribed periods of time would be most appropriate as this could be done on a very consistent basis and is a measurement with which many investors are already familiar.

Conclusion

There are undoubtedly some areas in the mutual fund industry, particularly in the retail segment of that industry, where asymmetries of information or other relevant circumstances do exist which would be best addressed through improved disclosure. The MRFP, or some aspects of it, are quite likely an appropriate means of addressing some or all of those issues. Similarly, the proposal that the MRFP and financial statements need be delivered only to investors that request them reflects what we expect is an accurate feeling that for many investors much of this information is not desired and will not be used. However, it is clear that any such asymmetries do not apply uniformly across all aspects of the "investment fund" industry. This is reflected in current securities law (through the exempt market regime and with the different treatment accorded index funds as compared to "active" funds under NI 81-102 for example). It is inappropriate to consider applying a uniform disclosure regime where the needs of investors are not, in fact, uniform. It is just as inappropriate to consider applying any regulatory regime where those needs it purports to address have not been clearly identified and other alternatives have not been thoroughly considered.

Please contact the undersigned or Warren Collier, Counsel (416-643-4075) for further explanation or clarification of any of the points made in this letter.

Sincerely,

Gerry Rocchi
President
Barclays Global Investors Canada Limited