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BY EMAIL

December 19, 2002

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba 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, Department of Justice, Government of Nunavut
c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Email: jstevenson@osc.gov.on.ca

- and -

Commission des valeurs mobilières du Québec
c/o Denise Brousseau, Secretary
800 Victoria Square, Stock Exchange Tower
P. O. Box 246, 22nd Floor
Montréal, Québec H4Z 1G3
Email: consultation-en-cours@cvmq.com

Dear Sirs and Mesdames:

Re: Proposed National Instrument 81-106 - Investment Fund Continuous Disclosure (the "Proposed NI")

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

1. Harmonization

We agree that harmonization of requirements is a worthy goal and adoption of a national instrument is a useful approach.

2. General

The requirements of Proposed NI will result in greater costs for investment funds, with more involvement of the auditors, and will provide more disclosure for investors. These costs most likely will ultimately be borne by investors. Whether the additional disclosure and resulting costs are warranted should in our view be judged based on what investors consider useful. It is not clear to us that investors have indicated their desire for this further disclosure at higher costs.

3. Definitions of "Investment Fund" and "Non-Redeemable Investment Fund" and the Requirements Applicable to Reporting Issuers

We submit that the regime contemplated by the Proposed NI is not appropriate for all issuers that might fall within the definition of "investment fund".

By way of example, the definition of "investment fund" seems broad enough to capture issuers of asset backed securities and split share and similar 'repackaging' vehicles. To require these types of issuers, which are essentially passive flow-through vehicles, to prepare, file and mail to registered and beneficial security holders annual and quarterly management reports of fund performance in the required form does not seem warranted. Similarly, for issuers whose portfolios are not "actively managed" it is unclear what benefit would accrue to investors for the added costs from the requirement for annual and quarterly statements of investment portfolio and summaries of portfolio investments for the period.

There are a number of types of issuers that are carved out of the definition of "investment company" in the U.S. Investment Company Act of 1940 and we recommend that exceptions to the definition of "investment fund" be included for issuers for whom the requirements of the Proposed NI would be of questionable value or relevance.

4. Requirement to File Material Contracts

Section 17.1 imposes a new filing requirement on non-redeemable investment funds and in our view should apply at most to investment funds formed after the date the Proposed NI comes into force or in respect of

material contracts entered into after the date the Proposed NI comes into force. As drafted, this section seems to require an existing non-redeemable investment fund, which is a reporting issuer but is not now making a distribution, to file now on SEDAR (i) material contracts that under prospectus rules it only had to make available for examination when it was in distribution and (ii) other material contracts that may have been entered into since that time whether or not those contracts are still in force and effect. This is an onerous requirement with uncertain benefit for investors. It is also an obligation that does not apply to other reporting issuers that are not investment funds.

5. Quarterly Management Reports for Mutual Funds

It is unclear to us why mutual funds that are reporting issuers should be obliged to provide quarterly management reports of fund performance when the interim financial statements that are required are still semi-annual statements. There does not seem to be a policy reason for the extra quarterly reports.

6. Timing of Financial Statements and Reports by Non-Redeemable Investment Funds

The Proposed NI does not change the requirement that mutual funds provide semi-annual financial statements, not quarterly financial statements. There is no apparent policy reason to treat non-redeemable investment funds differently and we recommend that such funds also be required to provide semi-annual rather than quarterly financial statements and management reports of fund performance.

7. Requirement for Mutual Funds that are not Reporting Issuers to File and Deliver Financial Statements

In our view, mutual funds that are not reporting issuers (sometimes referred to in this letter as "pooled funds") should not be obliged to file audited annual financial statements and interim financial statements with the Canadian securities regulators. Such filing requirement has the effect of making public the confidential financial statements of what is otherwise a 'private issuer, which could have competitive implications. We recognize that the Securities Act (Ontario), as recently amended, requires pooled funds formed under the laws of Ontario to file and deliver to security holders audited annual financial statements and semi-annual financial statements.

We submit that there is no investor protection or public interest purpose for requiring such filings on the public record that would outweigh

the interests of issuers that are not reporting issuers, and the security holders of such issuers, in maintaining privacy. In this regard, we note that several years ago the requirement that annual financial statements of 'private companies' be filed with the Director under the Canada Business Corporations Act was removed from that Act. We understand it was considered to be burdensome and too intrusive for 'private companies'. To the extent that the Proposed NI would extend the filing requirement for pooled funds to other jurisdictions that do not presently require such filing, we would recommend against it. We would recommend as well that the relevant provisions of the Securities Act (Ontario) that require the filing of financial statements by non-reporting issuers be reconsidered when legislative changes are again considered and that in the interim exceptions be provided in the Proposed NI.

Similarly, we would recommend that, for pooled funds, the matter of what interim financial statements are required to be delivered to security holders should be left to the parties and that the parties should be able to waive the requirement that an auditor be engaged. While we would not expect the waiver to be given except in cases where the vehicle has few security holders, the matter is one that we submit is appropriate for the parties to decide. This would put such issuers on equal footing with issuers that are structured as corporations that are not reporting issuers. Under the Business Corporations Act (Ontario) and the Canada Business Corporations Act, there is no requirement for interim statements to be provided to security holders of corporations that are not offering corporations or distributing corporations (i.e. that are not reporting issuers), and the shareholders of such corporations may agree each year that an auditor need not be appointed. It is not clear what policy concern supports a different approach for pooled funds. As more frequent statements and the audit requirement have cost implications for issuers and investors (and these costs are currently increasing substantially), we would submit that these are matters that should be left to the parties to determine. We note here as well that, for a jurisdiction like Ontario that requires delivery of audited annual financial statements and semi-annual financial statements to security holders of pooled funds, legislative changes or exceptions in the Proposed NI would be required to attain what we recommend.

8. Miscellaneous

Section 1.1 - Definitions of "fair value" and "market value" - It is unclear how the sale concept to establish value of a liability would work in all cases.

Section 2.5 - What is the result if the auditor is unable to issue a report without a reservation and the Canadian securities regulatory authorities are unwilling to grant an exemption as suggested in section 2.3 of the companion policy to the Proposed NI? This "without reservation" concept is not in section 78(2) of the Securities Act (Ontario).

Section 4.1 - To the extent that the Proposed NI as implemented regulates financial statements of pooled funds, the Proposed NI should permit the financial statements of such funds to be prepared in accordance with the GAAP provided for in the constating documents of the particular pooled fund.

Is Part 7 GAAP? If not, why should these additional requirements apply to financial statements of pooled funds?

Section 13.1 needs clarification. Are the restricted shares referred to in its capital or part of its portfolio assets?

Sections 15.2 and 15.3 - These sections require an investment fund to deliver or send copies of its financial statements and management reports of fund performance at no cost to any person or company. This person or company need not be a security holder or have any other relationship with the investment fund. This is a more onerous obligation than other reporting issuers have and has cost implications. We recommend it be limited to persons who are security holders but question why the SEDAR filing does not suffice as this Part of the Proposed NI only applies to reporting issuers.

Companion Policy, section 1.4 - Where there is a manager of an investment fund that directs the fund's affairs and a separate trustee that performs a more administrative role, we think it may be desirable to clarify that responsibility for disclosure requirements rests with the manager.

Companion Policy, section 3.1 - As the restrictions on securities lending transactions in National Instrument 81-102 - Mutual Funds do not apply to pooled funds, we think this section may require clarification.

Re multiple deliveries to one person or company - For certainty, we recommend including a statement like that in section 5.5 of Companion Policy 54-101CP - Communications with Beneficial Owners of Securities of a Reporting Issuer.

We trust these comments are helpful.

Yours truly,

William J. Braithwaite

Jennifer Northcote

Kathleen G. Ward