



December 19, 2002

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NORTHWEST TERRITORIES
REGISTRAR OF SECURITIES, GOVERNMENT OF THE YUKON TERRITORY
REGISTRAR OF SECURITIES, DEPARTMENT OF JUSTICE, GOVERNMENT OF NUNAVUT

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Ontario Securities Commission
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Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
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Montreal, Québec H4Z 1G3

Dear Sirs and Mesdames:

Re: National Instrument 81-106 Mutual Funds

Elliott & Page Limited would like to take this opportunity to provide its comments on the proposed National Instrument 81-106 (the "Instrument").

1. Management Reports of Fund Performance

The CSA's stated objective for Management Reports of Fund Performance ("MRFP") is to provide up-to-date information about mutual funds to current and prospective investors and to advisors and dealers who analyze the funds and recommend them to their clients. We agree with this general objective but believe the certain provisions of the Instrument do not incorporate the needs or reflect the behaviour of investors and advisors while at the same time increasing the costs to investors.

We agree with the principle that the objectives and strategies relating to the funds need to be plainly stated. All significant changes to the funds also need to be promptly brought to the attention of advisors and investors and the offering documents need to be amended accordingly. We do not, however, believe that quarterly MRFPs are necessary or even appropriate. First of all advisors and investors use long-term track records including absolute returns, relative returns and consistency of returns as a basis for a large part of their decisions. Mutual funds are clearly not the appropriate vehicle for short-term market timing speculation, yet the proposed quarterly MRFP will effectively increase the focus on shorter-term results. It is not clear in the proposal what degree of detail is expected to be provided in such reports and how investors will use or actually benefit from such information.

Second, also significantly influencing investment decisions is the nature of the fund, including its objective and strategy, management style, and the portfolio manager's approach. All of these components are largely static – certainly they do not change substantially from quarter-to-quarter. In fact, in almost every single instance, investors and advisors rely on the consistency of these components – and we have witnessed a strengthening in this trend. Advisors and investors are much more concerned with the manager's strategic approach, as opposed to short-term adjustments they make to their portfolios.

We also have concerns over the requirement to make forward-looking statements as described in Form 81-106FI. Reference is made to including information that describes not only anticipated future events, decisions, circumstances, opportunities and risk that management considers reasonably likely to impact future performance but also matters such as management's vision, strategy and targets. It appears to us that concepts that apply to MD& A reports for public companies are being used for mutual funds. We would ask that the CSA consider the differences between disclosing information about a public company and its operations where an investor holds an investment in a single company versus an investment in a generally diversified portfolio of securities. Again emphasizing the long-term nature of the investments and the goal of consistency it is difficult to see what factors would be reported each quarter as to anticipated events other than general economic factors that could influence future performance. If the CSA is looking for commentary on future economic factors that generally could affect broad industry sectors or geographic regions we question whether it is appropriate for managers to be providing such commentary. Is it appropriate for a manager of a Japanese fund to comment on the prospects of the Japanese economy and the effect it could have on performance of the fund? What time scale should managers use to comment on such factors? Should the time horizon be the next quarter, the next year or two years? We would suggest it is not the manager's responsibility to influence investors by suggesting future changes in the economy that could affect performance but that representatives advising the client or independent experts should be relied upon by the investor in deciding which sectors given his or her time frame are appropriate for them.

We would also ask the CSA to consider how many investors will want to receive the quarterly MRFP. In the end a report that is time consuming to organize and prepare for hundreds of mutual funds may end up being prepared for a very small percentage of the investors. Has the CSA any indication as to what percentage of investors would choose to receive such a report? It would appear that the CSA could obtain some information on the desire of investors to receive financial information as a result of the recent exemptive order provided to Scotia mutual funds. This order

mandates Scotia to disclose the percentage of requests for their annual financial information. We would encourage the CSA to review these results and consult with advisors when considering adding this additional disclosure.

In conclusion we would recommend that annual and semi annual reports be made available for investors and advisors. The content of the MRFP should be limited to a market review and a discussion of portfolio activity for the prior period and avoid forward-looking statements.

2. Financial Statements

We support the recommendation to allow security holders to choose whether to receive financial statements.

The recommendation to shorten the timelines for publishing financial statements from 140 days down to 90 days for annual statements and from 60 days down to 45 days for interims is commendable, but not practical. Preparing the financials is a very time intensive process and the existing deadlines are difficult to make. This is especially so for the interim statements and we do not believe moving the date 15 days is significant to investors.

We do not believe there is any need to provide quarterly financial statements and that annual and semi annual financial statements with a market review would be reasonable disclosure to investors. It is our view that the market would not utilize the information and would not want to incur the additional costs of having such information provided to them. In many cases less information is more to a great majority of investors. It would be more effective to provide less information and make it clear what other information is available and how such information can be easily obtained. As to the value of the information included in such statements other than the listing of portfolio assets we are unsure of the value to investors and advisors. This is a question that should be directed to advisors to obtain their views. Consideration could be given to providing an alternative of having the statement on the web site of the manager and making it known to investors it is available on the web site. Again it will be of interest to see what percentage of Scotia mutual fund holders request the mailing of the annual financial statements.

3. Disclosure of Risk and Volatility

On the question of alternative methods of disclosing risk and volatility we do not believe reporting the fund's best and worst quarterly performance is meaningful as such information is not useful without a complete understanding of the general market condition at that time. A detailed explanation of the circumstances would need to be provided in order to appreciate the significance of the information. Similarly, albeit to a lesser extent, this applies to disclosure of a fund's correlation to a benchmark index. This comparison becomes more complex in situations where a fund's investments cross a number of indexes. The correlation in such cases is even less relevant. If a benchmark could be established for each industry classification of mutual fund then we believe a comparison with this benchmark representing similar funds could be of benefit to investors.

4. General

One last general comment relates to the number of proposals and exemptive relief orders that are presently outstanding. We believe that revisions to the securities legislation should not be conducted on a piece meal basis but should be all inclusive. Though we agree with the general terms of the order provided for the Scotia mutual funds we were surprised that such an order was provided to one fund company when companies were being asked to comment on such proposal in a draft National Instrument. We applaud the British Securities Commission for their approach of a coordinated general revision of mutual fund legislation. We believe that National Instrument 81-106 should be coupled with general revisions to the disclosure rules relating to mutual funds. We understand that such a revision is underway which hopefully incorporates many of the suggestions of the British Columbia Securities Commission. If there are specific provisions that should not be delayed, such as the mailing of annual statements to all unitholders, we would suggest that a blanket order should be used pending the general revision.

We appreciate the opportunity of providing our comments.

Yours respectfully,

“Robert G. Wepler”

Robert G. Wepler
General Counsel & Secretary

