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Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
Securities Administration Branch, New Brunswick
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice,
Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division,
Department of Justice, Government of Nunavut
Ontario Securities Commission
Office of the Attorney General, Prince Edward Island
Commission des valeurs mobilières du Québec
Saskatchewan Securities Commission
Registrar of Securities, Government of Yukon
c/o John Stevenson
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Email: jstevenson@osc.gov.on.ca

\- and -

Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
Stock Exchange Tower
800 Victoria Square
P.O. Box 246, 22nd Floor
Montréal, Québec H4Z 1G3

Dear Sirs and Madames:

Re: Proposed National Instrument 81-106 and Companion Policy 81-106CP, Investment Fund Continuous Disclosure, and Form 81-106F1 Contents of Annual and Quarterly Management Reports of Fund Performance

Canadian Imperial Bank of Commerce ("CIBC") appreciates this opportunity to provide comments on proposed National Instrument 81-106 *Investment Fund Continuous Disclosure* (the "National Instrument"), Companion Policy 81-106CP (the "Companion Policy), and Form 81-106F1 *Contents of Annual and Quarterly Management Reports of Fund Performance* (the

"Form") published by the Canadian Securities Administrators (the "CSA"). Our response is on behalf of, and takes into account the impact that the proposed National Instrument will have on, CIBC in its role as manager of the CIBC Mutual Funds and Imperial Pools, and on CIBC Asset Management Inc. in its role as manager of the Talvest Mutual Funds, Renaissance Mutual Funds and Frontier Pools.

We have reviewed the comment letters of the Investment Funds Institute of Canada ("IFIC") and the Canadian Bankers Association (the "CBA"), and support the positions outlined in their respective letters.

Annual and Quarterly Management Reports of Fund Performance

The proposed National Instrument introduces the requirement of annual management reports of fund performance ("AMRs") and quarterly management reports of fund performance (QMRs"). AMRs and QMRs, which are required to be prepared in accordance with the Form, must present both quantitative and qualitative information about the fund and a management discussion of fund performance ("MDFP"). QMRs provide current information since the most recent AMR or QMR, as the case may be.

We do not believe that QMRs would provide investment fund securityholders with any more meaningful or robust disclosure than is already provided to investors. We believe that there is currently sufficient relevant information for investment fund securityholders to make informed investment decisions. If such disclosure is considered valuable, however, we recommend that it be limited so that it is prepared and delivered on annually and semi-annually. We are concerned that the preparation and delivery of QMRs to investment fund securityholders may encourage investors to adopt an inappropriate short-term perspective on fund performance.

The Five Year Committee Draft Report dated May 29, 2002, which considers securities legislation, regulations and rules and legislative needs in Ontario,[1] indicates that the Ontario Securities Commission should undertake a more rigorous cost-benefit analysis of proposed rules:

> [B]oth draft and final rules contain a section dealing with costs and benefits. This disclosure has often been boilerplate, providing a general overview of the benefits of the proposed regulation and certain of its costs. . . .
>
> The Committee believes that, as a general practice before implementing regulation, securities regulatory authorities should solicit, commission or conduct empirical studies with the objective of enabling regulators to assess the effectiveness, costs and benefits of the proposed regulation. This cost-benefit analysis should include, where possible, a description of background materials and empirical evidence relied on. This affords investors and market participants the opportunity to digest and challenge the Commission's analyses through the comment process and/or provide additional empirical evidence for the Commission's consideration.[2]

There could be significant additional costs to investment fund securityholders in providing AMRs and QMRs, including additional preparation, accounting review, editing, project management, design, copy proofing, translation, paper and printing, binding, fulfillment, delivery as well as legal costs. However, there has not been any empirical studies undertaken to understand these costs, nor expected benefits. We agree with IFIC that it would be appropriate for the CSA to undertake a survey to determine the costs of providing more information to investment fund securityholders and assesses the utility of information on the basis of the extent to which it would be used by an investment fund securityholder in making investment decisions.

[1] See section 143.12 of the *Securities Act* (Ontario).
[2] Five Year Committee Draft Report, May 29, 2002 at 49.

Delivery of request forms

Existing regulations require that financial statements that are required to be filed are also required to be sent to all securityholders. The proposed National Instrument would provide investment fund securityholders with the option of choosing whether to receive any or all of an investment fund's financial statements and management reports. In addition, the proposed National Instrument would require an investment fund to send request cards annually to registered and beneficial investment fund securityholders, and financial statements and management reports would only be sent to those who return the request card or otherwise have asked to receive these documents.

We strongly support providing investment fund securityholders with the option to choose whether to receive all of a fund's financial statements and management reports. However, we do not believe that investment funds should be required to send request cards to investment fund securityholders annually. Instead, we believe that it is sufficient to obtain instructions from mutual fund securityholders when securities of the investment fund are purchased. This would make the requirements for investment funds consistent with National Instrument 54-101 ("NI 54-101"), which provides that intermediaries are required to obtain instructions as to whether clients wish to receive or decline to receive certain types of materials, including financial statements and annual reports, upon the opening of an account, not annually.

Further, the proposed National Instrument provides that the request form *shall* be sent to beneficial investment fund securityholders in accordance with NI 54-101. NI 54-101 provides that clients of an intermediary may decline to receive certain materials, including: (a) financial statements and annual reports that are not part of proxy-related materials; and (b) materials that are not required by corporate or securities laws to be sent. The request form contemplated by the proposed National Instrument, however, does not fall into either of these categories, because (a) it is not a financial statement or annual report and (b) it *is* required by securities law to be sent. The ramifications are that an investment fund securityholder that holds investment funds through a dealer and who has informed the dealer under NI 54-101 that they do not wish to receive securityholder materials such as financial statements and other materials would nevertheless receive a request form from each investment fund such investor owns asking whether he or she wishes to receive financial statements, AMRs and QMRs. Therefore, we are of the view that an investment fund should not be required to send request forms, financial statements, AMRs or QMRs to beneficial investment fund securityholders who have declined in accordance with NI 54-101 to receive securityholder materials such as financial statements and other materials.

Proxy Voting

The proposed National Instrument requires that AMRs include disclosure of an investment fund's proxy voting policies and mandatory disclosure of proxy voting records showing how the portfolio advisers or the manager of the investment fund voted proxies of securities held by the investment fund. We are not aware of any evidence to suggest that investment fund securityholders have been demanding or have an interest in information related to proxy voting disclosure, that they have the time and expertise to review the information or that they find the information relevant or material to their investment decisions. Investment fund securityholders, however, will likely bear the costs associated with proxy voting disclosure. Most of the costs will relate to mandatory disclosure of proxy voting records. Such costs will include the actual costs of compiling and printing such information as well as the opportunity costs of making such disclosure and in dealing with lobbying by corporations and special interest groups. Costs could be quite high depending on factors, including the diversity of portfolio holdings, the delegation to advisers and sub-advisers, and the number of foreign securities, shareholder meetings, resolutions and circulars. In the United States, the Securities and Exchange Commission (the "SEC") has put forward a similar proposal for mandatory disclosure of proxy voting records.[3] The Investment Company Institute estimates costs associated with mandatory disclosure of proxy voting records to be US$839 million over twenty years, whereas the SEC's estimate over a twenty-year period would be US$102 million;[4] in either case, this is a significant amount of costs that may be imposed on investment fund securityholders. We believe that further cost-benefit analysis of mandatory disclosure of proxy voting records is warranted.

Mandated disclosure of proxy voting records would render investment funds unable to take advantage of confidential voting policies that may be adopted by corporations. Many institutional investors have submitted shareholder proposals for corporations to adopt confidential proxy voting policies. Although we are of the view that institutional investors will act in the best interests of mutual fund securityholders when voting proxies, confidential voting may mitigate pressures from managers of corporations to influence how institutional investors vote, especially where the corporation is a customer or a potential customer of the institutional investor or a related company. Professor Jeffrey MacIntosh states:

> Institutional investors such as banks, insurance companies, and trust companies often do business with corporations in which they have invested. By threatening to withdraw this business, management can often coerce institutional investors into voting in favour of management initiatives. This pressure would be significantly alleviated by requiring confidential voting supervised by independent scrutineers. Such a requirement would ensure that management would not be able to determine how particular shareholders had cast their votes.[5]

In addition, mandatory disclosure of proxy voting records may subject investment funds to increased lobbying by corporations or special interest groups seeking to sway their votes and may ultimately lead investment funds to fear deviating from their stated policies or risk being criticized by corporations, special interest groups or beneficiaries.

Therefore, we believe that disclosing proxy voting policies may be as or more beneficial to investment fund securityholders, without the costs and other deleterious effects of mandatory disclosure of proxy voting records.

Forward-Looking Information

Forward-looking MDFP discusses past events, decisions, circumstances and performance of investment funds in the context of whether they are reasonably likely to have a material impact on future performance of investment funds. In addition, forward looking information requires discussion of anticipated future events, decisions, circumstances, opportunities and risks that management considers reasonably likely to materially impact future performance, as well as matters relating to management's vision, strategy and targets.

Forward-looking disclosure involves anticipating a future trend or event or anticipating a less predictable effect of a known event, trend or uncertainty. We are concerned that forward-looking disclosure may encourage a short-term outlook on the part of some investment fund securityholders, and would be inconsistent with the character of investment funds as vehicles for

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[3]On September 19, 2002, the United States Securities and Exchange Commission proposed rules entitled "Disclosure of Proxy Voting Policies and Proxy Voting Records by registered Management Investment Companies" and "Proxy Voting by investment Advisers", which would require mutual funds to disclose their proxy voting policies and their actual proxy voting records, and investment advisers to disclose their proxy voting policies and to inform clients how they can obtain information about how proxies were actually voted (the "U.S. Proposals").[3]

[4] See the comment letter on the U.S. Proposals of the Investment Company Institute, dated December 6, 2002.

[5] Jeffrey G. MacIntosh, "The Role of Institutional and Retail Investors in Canadian Capital Markets", (1993) 31 Osgoode Hall Law Journal 371 at 388.

long-term investment. If the proposed National Instrument requires forward-looking information, however, we believe that there should be a safe harbor provision to prevent litigation if future results do not match forward-looking information, similar to the safe harbour provisions contained in the United States Private Securities Litigation Act of 1995 (the "PSLA"). The PSLA provides that issuers may *not* be held liable under federal securities laws for projections and other forward-looking statements, either written or oral, that later prove to be inaccurate, if the statements are identified as forward-looking and are accompanied by meaningful cautionary statements, the statements were immaterial or the statements were not made with actual knowledge that they were false statements.[6]

Timeframes

The time for filing annual financial statements (and proposed timing for AMRs) has been reduced from 140 to 90 days after year-end, while the time for filing interim financial statements (and proposed timing for AMRs) has been reduced from 60 days to 45 days after the end of the interim period. The AMR is required to be filed at the same time as the annual financial statements. In our view, there is no need for shortening timeframes for filing and delivering financial statements. As far as we are aware, there is no evidence that investment fund securityholders are requiring more timely access to information. And, as explained by IFIC, more frequent access may encourage investors to take an inappropriately short-term view of the performance of investment funds. On the other hand, the preparation of financial statements takes a considerable time and requires much work and coordination, including from business and product groups, fund valuation and accounting departments, external auditors, legal counsel and boards of directors. The reduction of timelines for preparing financial statements could lead to a corresponding reduction in the quality of financial reporting by investment funds. In the end, shortening timeframes, in our view, may reduce the quality of financial reporting with little or no corresponding benefits.

We would be pleased to answer any questions that you may have about our comments.

Yours very truly,

Jeffrey M. Larsen
Counsel
Canadian Imperial Bank of Commerce

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[6] Richard A. Rosen, "The statutory safe harbor for forward-looking statements after two and a half years: Has it changed the law? Has it achieved what congress intended? (1998) 76 Washington University Law Quarterly 645 at 652.