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BY E-MAIL

March 25, 2003

Joint Forum of Financial Market Regulators
Joint Forum Project Office
5160 Yonge Street
Box 85, 17th Floor
North York, Ontario
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Attention: Stephen Paglia, Senior Policy Analyst

Dear Stephen:

Joint Forum of Financial Market Regulators (the “Joint Forum”) Consultation Paper 81-403 *Rethinking Point of Sale Disclosure for Segregated Funds and Mutual Funds* (the “Consultation Paper”)

We write with respect to the Consultation Paper as published on February 13, 2003. We were pleased to review the Consultation Paper and recognize it as an important step towards the harmonization of the regulation of segregated funds and mutual funds in Canada. Please take this letter as our comments offered, together with those of our clients, First Horizon Capital Corporation, manager of Horizons Mondiale Hedge Fund and Horizons Tactical Hedge Fund and of Mondiale Asset Management Ltd., portfolio adviser to Horizons Mondiale Hedge Fund.

Rather than offering comments with respect to certain specific issues raised in the Consultation Paper, this letter instead offers a general comment as to the relationship between the proposals in the Consultation Paper and commodity pools. We anticipate filing a further comment letter that addresses the specific issues raised.

Background: Commodity Pools

Commodity Pools are publicly offered mutual funds that use “alternative” investment strategies involving derivatives and commodities. The term “commodity pool” is somewhat of a misnomer, in that such funds need not, and typically do not, invest directly or indirectly in physical commodities. Currently, in addition to being governed by provincial securities legislation, commodity pools are subject to the requirements of National Instrument 81-102 (“NI 81-102”), National Instrument 81-105 (“NI 81-105”) and National Instrument 81-104 (“NI 81-104”). NI 81-104 came into effect in late 2002 and represented a significant step towards harmonizing the regulatory treatment of commodity pools across Canada.

With respect to continuous disclosure, commodity pools are not subject to National Instrument 81-101, which utilizes a simplified prospectus and annual information form approach to such disclosure. Rather, commodity pools are required to file and deliver a long form prospectus. In addition, pursuant to NI 81-104, commodity pools file and deliver interim financial statements on a quarterly, rather than a semi-annual basis. Commodity pools are contemplated to be subject to the continuous disclosure requirements in Proposed National Instrument 81-106 Investment Fund Continuous Disclosure.

Currently, then, commodity pools are required to deliver at the point of sale a long form prospectus. The practical result is that consumers are even less likely to use a commodity pool prospectus to help them make their purchase decisions than to use the simplified prospectus applicable to “regular” mutual funds. Sales representatives dislike such long form prospectuses, as they are too unwieldy and complicated to be an effective sales tool.

Comment

We note that the Consultation Paper, with respect to foundation documents, continuous disclosure, fund summary documents and a consumers guide, does not contemplate extending these revised concepts to commodity pools, although the ease of such extension is recognized in the commentary.

We suggest that the extension of the continuous disclosure regime discussed in the Consultation Paper to commodity pools is something the Joint Forum should explore and pursue. Underlying this suggestion are the following thoughts:

- Commodity pools represent a fast growing area of investment for Canadian consumers. Commodity pools often pursue capital preservation or market neutral strategies that have become increasingly attractive as the market continues to ravage traditional equity-focused mutual funds, which have suffered significant net redemptions in recent years. For example, Horizons Mondiale Hedge Fund, a commodity pool,

currently has \$130 million under management as at February 28, 2003, up from \$1.7 million at December 31, 1997.

- The number of commodity pools available to Canadian consumers in recent years continues to expand. In addition, segregated funds are also beginning to exploit commodity pool type strategies. For example, we note the recent announcement of National Life's new fund of fund product National Life Alternative Investment Strategies Fund, which is a hedge fund product managed by Norshield Financial Group.
- The use of derivatives and leverage strategies by commodity pools involves concepts and structures that are, we suggest, more difficult for the average consumer to comprehend than, for example, the value investing strategy used by many equity mutual funds. Given this, the average consumer is currently doubly disadvantaged when making a decision with respect to investing in a commodity pool, in that a long form prospectus, with its voluminous and detailed disclosure is less effective, we suggest, than a simplified prospectus. Put another way, the current disconnect between theory and practice with respect to disclosure is even greater with respect to commodity pools than with respect to regular mutual funds.
- As commodity pools are becoming "mainstream" consumers should be afforded the opportunity to compare the benefits of investing in a commodity pool as a "regular" mutual fund. It is important, then, that disclosure documents across the investment fund spectrum facilitate such comparisons.

Upon the above, we suggest that complete, accurate and understandable disclosure with respect to commodity pools would be better furthered if commodity pools were included in any concrete proposals that arise out of the Consultation Paper.

In addition, we also would like to take this opportunity to comment that we recognize the value in extending the concepts discussed in the Consultation Paper to other publicly offered investment funds, such as exchange-traded funds, labour sponsored funds and other products.

Both we, First Horizon Capital Corporation and Mondiale Asset Management would be pleased to respond to any questions which you may have and look forward to further developments arising out of the Consultation Paper.

Thanks again for the opportunity to comment.

Yours truly,

“Kevin Brocklehurst”

Kevin G. Brocklehurst
for **LANG MICHENER**

“Brian Mizzi”

Brian Mizzi
for **FIRST HORIZON CAPITAL CORPORATION**

“Neil Beattie”

Neil Beattie
for **MONDIALE ASSET MANAGEMENT LTD.**

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