ACPM · ACARR

The Association of Canadian Pension Management
L'Association canadienne des administrateurs de régimes de retraite

April 30, 2003

Mr. John Stevenson
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, ON M5H 3S8

Re: Proposed National Instrument 81-106 – Investment Fund Continuous Disclosure

Dear Mr. Stevenson:

The Association of Canadian Pension Management (ACPM) is the national voice of private and public sector pension plan sponsors in Canada, as well as the professional advisory firms they retain. The ACPM's 1000 members represent over 500 pension plans with total pension assets of $400 billion, representing 80 percent of Canadian pension fund assets.

ACPM's mission is to promote the growth and health of Canada's retirement income system by championing the following principles:

- clarity in pension legislation, regulation and arrangements;
- good governance and administration; and
- balanced consideration of stakeholder interests.

We are writing in response to the request for comments on Proposed National Instrument 81-106 (the "Instrument"). We recognize that this submission is being made after the deadline for submissions, but wanted to provide our comments so that they could be considered to the extent possible.

Our focus in this letter is on investment funds that are not "reporting issuers" under securities laws (we have referred to these as "pooled funds" in this letter). These would include private pooled funds established for the investment of pension fund assets.

We note that private investment funds are relevant to pension funds in various ways. In particular, a defined benefit pension fund may choose to invest in a pooled fund, and a defined contribution pension plan may make pooled funds available as an investment option for member accounts. As you may be aware, a separate initiative of the Joint Forum of Financial Market Regulators is considering issues applicable to capital accumulation plans (which include defined contribution pension plans).

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Distinction Between the Pension Fund Investors and Retail Investors

The relationship between a retail investor and an investment fund differs significantly from the relationship between a pension fund investor and an investment fund, particularly in the areas of potential conflicts of interest and adequate disclosure of investments.

Retail investors must transact with an intermediary dealer who has an interest separate from the investor. A conflict of interest may arise in such a relationship. However, a pension plan administrator selecting investments on behalf of a pension fund has no divergence of interest from the plan members. The administrator in this key oversight role has a recognized fiduciary duty to plan members, and has no financial or other interest in the transaction that could conflict with its duty to act in the best interests of those members. The pension plan administrator is also subject to statutory prohibitions on conflicts of interest.

With respect to disclosure, the plan administrator is in a position to obtain the necessary information in deciding whether to make or retain an investment in a pooled fund. Such an arrangement ensures an appropriate level of disclosure.

Application of the Instrument

We strongly support the approach of the Instrument regarding its application, namely, that parts 5, 6 and 8 through 17 do not apply to investment funds that are not reporting issuers. We are not commenting on the appropriateness of the Instrument for reporting issuers, but we agree that these provisions should not apply to pooled funds.

The Instrument and Pension Funds

Although beyond the scope of the Instrument, we question whether it is appropriate to have any mandatory requirement for disclosure relating to pooled funds. These are private investment vehicles that operate exclusively in the exempt market. Investors should be permitted to operate in that market free of restrictions (and their attendant costs).

The only parts of the Instrument that would apply pooled funds are parts 1 (definitions), 2 (annual financial statements), 3 (interim financial statements), 4 and 7 (contents of financial statements) and 18 through 20. We have 3 principal comments relating to the application of the Instrument to pooled funds.

Complexity

We do not support the provisions of the Instrument that increase the complexity of management and reporting for pooled funds. Pooled funds are currently required to prepare, file and provide to investors annual and interim statements in accordance with GAAP. We believe that the preparation alone is satisfactory.

We support the provisions of the Instrument that remove the requirements for mandatory delivery of financial statements other than to those investors who request it.

Timing

We do not believe that the reduction in time periods for the delivery of financial statements is necessary. Pension funds should be free to make their own arrangements with the pooled funds in which they invest.

It is also noteworthy that the Instrument would require funds to provide increased financial disclosure in less time.

Cost

This is really an umbrella issue. Increased obligations of any type on pooled funds invariably result in increased costs, which are passed on to the investor.

There is a high value in the retirement income system in low-cost group savings plans and investments. The regulation and cost of regulation of investment funds discourage employers from making savings and pension plans available to employees. In addition, such regulation adds to fund management costs ultimately borne by plan members and plan sponsors, thereby decreasing their ultimate return.

For example, sections 2.3(1)(d) and 3.3(d) add a "summary of portfolio investments" to the required contents of annual and interim financial statements. These provisions should replace the "statement of investment portfolio" described in sections 2.3(1)(c) and 3.3(c) rather than be a supplement. If both statements are maintained, additional costs will be incurred without any incremental benefit to security holders. In addition, sections 2.3(1)(g) and 3.3(g) add a "statement of financial highlights" to the required contents of annual and interim financial statements. These provisions represent additional work for the fund.

Because pension funds are long term investors, even a small increase in cost can have a considerable impact. Therefore, we recommend that excess costs be eliminated by removing the provisions above.

We would be pleased to provide further comments if required.

Yours truly,

Priscilla H. Healy
Chair, Advocacy and Government Relations Committee
THE ASSOCIATION OF CANADIAN PENSION MANAGEMENT