

# STIKEMAN ELLIOTT

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**BY TELECOPIER**

March 9, 2004

Ontario Securities Commission  
20 Queen Street West  
Suite 1800  
Toronto, Ontario M5H 3S8

Attention: Mr. John Stevenson, Secretary

Dear Mr. Stevenson:

**Re: Proposed National Instrument 81-107**

This letter represents my personal and without prejudice comments (and not those of the firm or any client) with respect to the OSC's proposed National Instrument 81-107.

1. The proposed Instrument is inconsistent with respect to changes of control of managers, as opposed to changes of managers. For example, commentary 1 to section 2.3 seems to equate a change in manager with a change in control of a manager. Similarly commentary 2 to section 2.10 equates a change in manager to a change in the controlling shareholder of a manager. However, section 2.10(1)(f) only refers to a change in the manager, not a change in control.
2. The commentary may suggest, with respect to section 2.8, that contractual limitations of liability for IRC members could be provided for in the trust indentures of mutual funds.
3. Section 3.2(2)(c) should clarify that the investor is to be allowed to redeem and switch without fees, not just to redeem and take cash, if that is the intent. The current wording could possibly be read to require no-fee redemption even where the client is taking cash, which does not appear to be the intent.

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4. Section 3.3(1)(c) seems to inappropriately discriminate against alternative trading systems (ATSs) in favour of exchanges, and to violate the “competitiveness” principle embedded in section 5.2 of NI 21-101. As trades through ATSs are subject to transparency requirements under Part 7 of NI 21-101, and as ATSs and their subscribers are regulated by MRS and thus also subject to other market integrity requirements, the Instrument should be neutral, and should allow mutual funds to trade as they see fit. Otherwise, existing and future ATSs will be discriminated against, especially given the size and importance of mutual funds as investors.
5. The use of the term “print” is also not recommended, since the word is alternatively commonly used to mean both “execute” and “report”. Also, query what one does if a security is dual-listed and the foreign market is the best place to execute the trade?
6. Also, in section 3.3, query:
  - (a) how the section applies when no dealer is used (e.g., to save on fees),
  - (b) how this section applies to fixed income securities (for which quotations are now being publicly reported in Canadian newspapers and elsewhere),
  - (c) what (1)(c)(iii) means (it is very hard to understand, with its use of the terms “report” and “otherwise”), and
  - (d) what does it mean in section 3.3(2) for a trade to be exempt from NI 21-101 (does it mean that it need not be reported by an applicable executing marketplace?), and why is an exemption from s. 6.1 and Part 8 of NI 23-101 provided (does it mean that inter-fund trades alone can proceed outside normal marketplace hours and without RS review, which seems strange, or that the trading mutual funds involved or their manager are seen to be a marketplace as a result – the latter seems improbable, given the “multiple buyers and sellers” defining characteristic of marketplaces)?

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Thank you for considering these comments.

Yours truly,

Simon Romano

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