VIA ELECTRONIC MAIL

April 5, 2004

Ontario Securities Commission
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Toronto, Ontario
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e-mail: jstevenson@osc.gov.on.ca

Attention: Mr. John Stevenson, Secretary

and

Autorité des marchés financiers
800 Victoria Square, Stock Exchange Tower
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e-mail : consultation-en-cours@cvmq.com

Attention : Ms. Denise Brousseau, Secretary

Dear Sirs/Mesdames:

Re: Proposed National Instrument 81-107

The independent members of the Board of Governors of The Cundill Funds are pleased to submit our comments with respect to Proposed National Instrument 81-107. You will be aware that we also submitted our comments with respect to Concept Proposal 81-402 in a letter dated June 17, 2002.

We are both disappointed and disturbed that the Canadian Securities Administrators have significantly "gutted" the requirements of the Concept Proposal. In the CSA Concept Proposal it is stated that:

"Good governance for mutual funds requires:
- accepted standards of conduct for industry participants
- accountability of industry participants to investors
- relevant and timely information to investors and markets
- fundamental rights for investors
- independent monitoring and oversight by a group acting as a proxy for investors".

The Concept Proposal addressed the last point. The CSA requested comments as to whether the Proposal would result in "mutual funds being monitored by a governance agency that:

a. effectively oversees the management of the mutual funds
b. has real powers and real teeth
c. adds value for investors".

Except for minor comments in various areas, we believed that, by and large, in its Concept Proposal, the CSA had achieved a workable balance between the interests of the management companies and the interests of the mutual fund investors.

By reducing the role of the governance agency or independent review committee (the "IRC") to dealing with conflicts of interest only the Proposed National Instrument 81-107 in Part 3 removes important protections for mutual fund investors as set out in Section 5 of the Concept Proposal. In so doing, NI 81-107 fails to meet the tests outlined above (a. and b. and c.).

It is difficult to understand how an IRC can have powers and teeth in the face of the following process:

> "Where there is a conflict of interest, the fund manager must refer the matter to the IRC and obtain its recommendation. The manager would be allowed to proceed even where the IRC does not agree, but must disclose the IRC's position and the reason for not following the IRC's recommendation to the fund's unitholders."

In our view, this leaves the IRC with very little power, a situation that, when combined with the proposed repeal of the existing self-dealing and conflict of interest prohibitions in the Securities Act and NI 81-102, is not in the best interests of the unitholders.

We fully support the view of the Investors Group, the largest fund manager in Canada, regarding the duties of an independent board as expressed in its June 7, 2002 comment letter on Concept Proposal 81-402:

"The board should have the general responsibility to supervise the management of the business and affairs of the mutual fund in order that decisions affecting the mutual fund are made in the best interests of the security holders of the mutual fund. The board need not have a detailed list of specific duties, but certain minimum responsibilities should be established. The minimum duties could include: (i) evaluating the performance of the manager in various categories (including in providing an adequate level of service to security holders and in producing acceptable investment returns for the mutual fund, before and after expenses, in comparison to appropriate benchmarks that take into account the mutual fund's risk profile); (ii) reviewing the financial statements of the mutual fund; (iii) checking that the mutual fund is following its investment objectives; (iv) monitoring the manager's compliance with the mutual fund's compliance plan; and

(v) making decisions on behalf of a mutual fund whenever conflict of interest issues arise between the mutual fund and any other party."

Independent oversight of mutual funds in Canada has been studied and reviewed for over ten years. Every study has recommended greater independent oversight than that required by NI 81-107. We do not understand the rationale that the CSA has used to implement a lower standard.

We would also like to comment on several of the overarching themes from the comments received on the Concept Proposal:

"Costs is an issue" – may we respectfully suggest that the savings to be achieved from abolishing trailer fees, which are a significant cost to unitholders and which arguably provide few, if any, benefits to them, will pay for the costs of an IRC many times over.

"Mutual fund managers wish to maintain control" – this should not even be an issue. The function of the IRC should be oversight, which would not take operational control away from the manager in any sense.

In addition, we make the following specific comments:

1. We continue to believe that it would be inappropriate for the board of the trust company of the funds to act as the IRC (section 2.1, Commentary #2 of NI 81-107). The first responsibility of that board is to the trust company, not to the unitholders of the funds for which the trust company acts as trustee. In addition to not having divided loyalties such as in that case, we wish to emphasize how important it is that the members be truly independent of the manager, as set forth in section 2.4 of NI 81-107.
2. We understand that each IRC will design its own terms of reference, which would include such items as number of members of the IRC, the number of terms a member of the IRC can act, length of term, etc. In this regard, we believe that there should be reasonable limits on the number of terms a member of an IRC can serve and that the terms should be staggered to ensure continuity. However, we accept that the details can be set by each IRC. (See section 2.3(2) and Commentary #3).
3. We fail to understand how the investor is well served by ending the term of office of all members of the IRC on a change of manager (section 2.10(1)(f)) for the following reasons: there would be a lack of continuity and therefore "institutional memory"; it introduces another transitional period where the IRC is not fully independent in that the members are beholden to the manager for their appointment; and there are significant costs incurred in educating the new members with no experienced members to assist in that process. For these reasons we also believe that at the time of implementation of NI 81-107, where there are existing governance agencies comparable to an IRC, that managers

should be required to ensure that at least one-third of the members of the new IRC come from the existing governance agency.

4. We believe that the IRC should have a duty to ensure that meaningful information is provided to the unitholders and to report on its own activities on an annual basis.

We would also like to recommend that the regulators and the industry set up an education programme for new governors. They can draw on the experience of those acting as independent governors in the current environment.

In conclusion, we strongly urge the CSA to reconsider its position and move towards its own recommendations contained in the Concept Proposal 81-402. We also urge you to seek the views of other independent governors/directors on NI 81-107.

We expect that the mutual fund management companies which are leaders in the governance of their funds and already go beyond the requirement of NI 81-107 will set the bar higher for their competitors than the regulatory authorities seem to require.

Mutual fund investors deserve no less.

Respectfully submitted,

"Michael A. Meighen"

Michael A. Meighen, QC, Chairman

On behalf of the independent Governors of The Cundill Funds

O. Margaret Davidson
Helen M. Meyer
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