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PERFORMANCE THROUGH INNOVATION
BARCLAYS GLOBAL INVESTORS

April 5, 2004

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Re: Canadian Securities Administrators Proposed National Instrument 81-107 - *Independent Review Committee for Mutual Funds*

We at Barclays Global Investors Canada Limited (BGI) thank you for your invitation to comment on Proposed National Instrument 81-107 (the "Proposal"). We are strong believers in the value of meaningful dialogue between regulators and industry participants and commend the Canadian Securities Administrators for the thorough public consultation they have undertaken in connection with the Proposal.

BGI, which currently manages over $38 billion in assets, is one of Canada's largest and fastest growing investment managers. We are not currently the manager of any "traditional" mutual funds. We do however manage the iUnits family of exchange-traded funds (which are subject to NI 81-102) and the Barclays Funds family of exchange traded "structured" funds and we use non-prospectused mutual funds ("pooled funds") to a fairly significant extent in our core business of providing investment advisory services to Canadian pension funds and other institutional investors. BGI is part of a global investment management business that manages well over a trillion dollars in assets and we therefore have very broad experience in regulatory approaches applied to this industry, including mutual fund governance regimes. While we have an interest in the impact the

Proposal may have on the Canadian mutual fund industry as a whole, our comments will focus primarily on matters related to the funds we manage.

I. General

We applaud the CSA for what has obviously been a thorough analysis of the various aspects of Concept Proposal 81-402 (the "Concept Proposal") and the many comments received by the CSA in respect of the Concept Proposal. In our comment letter dated May 27, 2002 on the Concept Proposal, we emphasized that given the lack of detail in the Concept Proposal and the potential far reaching impact of those details on industry participants it would be essential for the CSA to remain open to considering significant changes. In a number of areas, the Proposal reflects a different approach than was contemplated in the Concept Proposal. More specifically, the Proposal targets what we felt were the most appropriate areas of governance oversight and steps back from some of the more far-reaching aspects of the Concept Proposal which we felt were inappropriate. It is clearly in the area of conflicts of interest that any governance body would add significant value and it is on this area that the Proposal contemplates the Independent Review Committee ("IRC") focusing its attention. We strongly support this focus and believe it will enhance the credibility of the IRC and increase its effectiveness.

We continue to support any initiative that will achieve real investor protection in a practical and streamlined manner and are of the view that a narrowed focus for the IRC is appropriate. As expressed in our May 27, 2002 letter, we strongly feel that regulation is only appropriate in certain areas and that prescriptive regulation is generally less effective than principle based regulation in those areas. Conflicts of interest was one area where we continue to feel that regulation is necessary and we believe that implementing a regime such as that contemplated by the Proposal, provided it is coupled with a rollback of certain existing prescriptive regulations, is an important improvement in the CSA's approach to regulation in this area. While we continue to believe that serious consideration should be given to whether any formal governance mechanism is actually necessary, we believe that, on the assumption it is, the Proposal properly focuses the areas to which that mechanism will apply.

The entire investment fund industry remains burdened by an onerous regulatory regime and includes much regulation that does little if anything to effectively address the needs of investors, industry or the Canadian marketplace. In particular, the existing approach to the regulation of conflicts of interest is unduly restrictive in certain areas while, at the same time, it is too narrow in that it deals only with specified types of transactions and not with conflicts more generally. In that regard, we urge you to ensure that (a) the restrictions on mutual funds and portfolio managers that you propose contemplate repealing are repealed concurrently with the introduction of the Proposal and (b) all the appropriate restrictions are repealed. We would be happy to discuss the list of appropriate restrictions with you but it must include at least those rules dealing with related party transactions and inter-fund

trading (along with the filing and disclosure requirements that accompany the existing regime).

II. Specific Comments

01. *Do you think this Instrument should apply either more broadly or more narrowly? If so, please explain why and in what matter.*

We believe that it is appropriate, as the Proposal contemplates, that the Proposal should apply only to specific publicly offered mutual funds. This is not to say that some governance regime may not be appropriate for some or all of the other types of funds but the cost-benefit analysis for each different type of product will be different and, to date, the cost-benefit analysis has only been carried out in respect of these specifically contemplated mutual funds. As an example, an analysis of whether an IRC would be appropriate for "pooled funds" (funds offered solely in reliance upon exemptions from the prospectus and registration requirements) would clearly need to take into account the sophisticated nature of the clients, the reporting made available to those clients and the contractual relationship between the fund manager and the clients.

Similarly, the considerations in determining whether an IRC or other governance mechanism is appropriate for mutual funds listed and posted for trading on a stock exchange, many very different considerations arise. [As the manager of the largest family of such funds in Canada, we happen to believe that a governance regime very similar to that set out in the Proposal might be appropriate for such funds but it would need to take into account the exchange traded nature of the funds and the different distribution structure of fund units. We believe that this governance regime should be established and overseen by the same body that establishes governance requirements for other listed issuers – the exchange itself. We have held preliminary discussions with the Toronto Stock Exchange on this topic and will continue to work with the TSX on the establishment of an appropriate regime based on the provisions of the Proposal.]

02. *Do you agree with a "principles" based definition of independence? Are there alternatives?*

We generally support the "principles" based definition of independence. We do have concerns with certain aspects of the definition though as set out in our response to Question 03.

03. *Do you consider the definition of independence in subsections 2.4(2) and (3) appropriate?*

The definition of independence in these sections addresses the issues that need to be addressed and, for the most part, addresses them appropriately. However, the definition should be amended to specifically address the situation where an individual otherwise qualified to serve on a funds IRC is an investor in that fund. It could be argued, at least at

some investment threshold, that such an investment would constitute a "material relationship". We strongly believe that having IRC members invest alongside the other investors whose interests they are charged with protecting is highly desirable and the definition should be amended to remove any uncertainty on this point.

- The three-year "waiting period" contemplated in the Commentary to these subsections that applies to various individuals such as former legal or tax advisors, etc. should be decreased to one year.

04. Commentary 4 describes certain categories of persons we consider to have a material relationship with the manager of the mutual fund. Do you agree with the categories of precluded persons? Are there other categories that should be added?

The categories described in Commentary 4 are appropriate. However, a "*de minimus*" threshold should be established in respect of consulting, advisory or other compensatory fees received, directly or indirectly, from the manager, the mutual fund or an entity related to the manager. This would ensure that minor retainers that would otherwise clearly not give rise to a "material relationship" do not act to preclude otherwise qualified individuals from serving as IRC members

05. *Is the "cooling off" period in Commentary 4 an appropriate period? Too long? Too short?*

The three-year "cooling-off" period is too long, particularly in respect of persons covered for having received any consulting, advisory or other compensatory fee. Arguably, many of these individuals would be appropriate IRC members immediately upon ceasing to provide these types of services to the manager as any conflict ceases at that time. However, to avoid the "appearance of conflict" a shorter cooling-off period, no longer than one year, would be appropriate for such persons.

06. *We were told that without a limit on the liability of members of the independent review committee, insurance coverage for the members would be difficult to obtain. What are your views given the responsibilities the IRC will have under this Instrument?*

We have not independently sought input from our insurers on the possibility of obtaining insurance coverage for IRC members but, at a high enough price, we believe that insurance coverage could be obtained. We do not know what that cost might be, but it will definitely be higher than would the cost of similar insurance were there to be a limit on liability. Our sense is that the additional costs arising in obtaining insurance, plus the higher fees likely to be demanded by IRC members facing unlimited liability (addressed in our response to the next question) would probably outweigh the benefit to fund securityholders of having unlimited recourse to IRC members.

07. *Will potential members be deterred from sitting on the independent review committee without such a limitation?*

We believe that the existence of unlimited liability and, at least at the outset, the uncertainty of the availability of insurance, could deter some potential members from sitting on an IRC. As is the case with the availability of insurance though, at some level of compensation, we expect that some subset of qualified individuals would agree to act as IRC members even faced with unlimited liability. Unfortunately what the cost might be cannot be determined in advance. There can be little doubt though that the cost would be higher than would be the case if potential IRC members knew that the extent of their potential personal liability was limited. As is the case with insurance, our sense is that the additional cost would quite likely outweigh the benefit of unlimited liability.

08. *We believe the changes to a mutual fund set out in section 3.3 involve conflicts of interest which can appropriately be referred to the independent review committee. Is this the right approach? Are there alternatives?*

We agree that the changes set out in section 3.3 could give rise to, or at least give rise to the appearance of, conflicts of interest and should be referred to the IRC. This is definitely the right approach and our only suggestion is that you consider whether it is necessary to include the list of changes or whether the definition in section 3.1 is not sufficient on its own.

09. *Does the right to transfer free of charge to another mutual fund managed by the same manager need to be mandated or is it industry practice?*

We express no view on this point.

10. *Do you agree with our proposals for inter-fund trading (in particular, the scope of the provisions?) If not, please explain.*

We generally agree with the proposals for inter-fund trading but believe that the scope should be slightly expanded to include one additional type of transaction. Section 118 of the *Securities* Act (Ontario) prohibits a portfolio manager from trading securities between specified accounts. Our understanding is that provided section 3.3 of the Proposal is complied with, this section would not apply to trades between mutual or pooled funds managed by the same manager. However, 3.3 should be revised to include not just mutual funds and pooled funds but also "separate accounts" managed by a portfolio manager who is also the manager of a mutual fund to which section 3.3 applies.

11. *Should clause 3.3(1)(b)(1) refer to "the last sale price" or should it enable managers to trade within the bid/offer spread during the trading day?*

Clause 3.3(1)(b)(1) should refer to neither "the last sale price" nor "within the bid/offer spread" but should refer to the "closing price" of the relevant security on its primary exchange.

12. *Is the pricing referred to in paragraph 3.3(1)(b) appropriate for illiquid exchange-traded and foreign exchange-traded securities, over the counter equity securities and debt securities.*

Subject to our response to question 11, we believe that the pricing is appropriate for foreign exchange traded securities and for illiquid exchange traded securities.

13. *Should the current market price of illiquid equity securities on an exchange be treated differently from over-the-counter equity securities?*

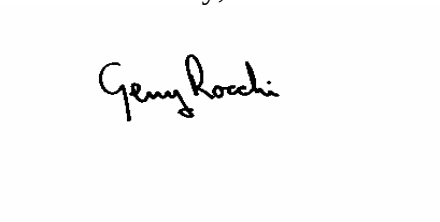
As noted in our response to question 12, the current market price for illiquid equity securities should be the closing price for those securities on their primary exchange.

III. CONCLUSION

We thank you again for inviting us to comment on the Proposal and applaud you for the serious thought that has obviously gone into not just drafting the Proposal but considering its scope and where additional thought may be appropriate. We look forward to discussing the Proposal with you further.

Please contact the undersigned or Warren Collier, Counsel (416-643-4075) for further explanation or clarification of any of the points made in this letter.

Sincerely,



Gerry Rocchi
President
Barclays Global Investors Canada Limited