

April 7, 2004

John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West  
19<sup>th</sup> Floor, Box 55  
Toronto, Ontario  
M5H 3S8

and

Denise Brousseau, Secretary  
Commission des valeurs mobilières du Québec  
800 Victoria Square, Stock Exchange Tower  
P.O. Box 246, 22<sup>nd</sup> Floor  
Montreal, Québec  
H4Z 1G3

Dear Mr. Stevenson and Ms. Brousseau,

We are writing on behalf of Tradex Management Inc. (TMI) to provide you with our views on proposed National Instrument (NI) 81-107. While we could make numerous comments on the details of the proposed National Instrument, we will restrict our discussion to the overall governance of mutual fund managers and the establishment of Independent Review Committees.

The Canadian Securities Administrator's (CSA) discussion document very correctly states:

“Mutual fund managers owe a fiduciary duty to the mutual funds they manage and, by extension, to the investors in those funds as a whole. The fiduciary duty includes both a duty of loyalty and a duty of competence. This fiduciary duty arises at common law and civil law and is reinforced by the standard of care provisions in the Securities Acts of British Columbia, Alberta, Saskatchewan, Ontario, Québec, Nova Scotia and Newfoundland.”

At Tradex, the Directors take this fiduciary responsibility very seriously. In this regard, the Directors believe that they have an equal responsibility to both the management company and the mutual funds that it manages and for which it acts as trustee (two

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of the three Tradex mutual funds are trusts and the other is a limited company). To ensure that the Board of Directors carries out its fiduciary responsibilities in this manner, Tradex has adopted a governance structure whereby:

- Nine of the ten Directors are completely independent of management (the President being the only employee of TMI who is a Director).
- There is a separation of the roles of Board Chair and President, with the Chair being an independent Director elected by the Directors.
- The Board of Directors appoints the President and his/her services are retained, under good behaviour, at the pleasure of the Board.
- The Audit Committee of the Board consists of three independent Directors.
- At the end of each Board meeting there is an “in camera session” where the Directors meet without management personnel present in order to encourage the most candid discussions.
- Annually, the Board conducts a self-assessment to gauge its own effectiveness and to set priorities for the coming year.
- Any conflicts of interest (there are very few since we contract out our investment advisory, registrar, fund accounting and custodian requirements) are discussed and resolved by the full Board.
- The three mutual funds that Tradex manages also have committees consisting of two Directors and one investor representative. These committees oversee the activities and performance of the fund and report to the Board of Directors (including on such things as approving any changes to the investment guidelines and presenting them to the Board for approval).

We believe that the model described above, which centers around the establishment of a governance framework with a strong, independent Board of Directors, is far superior to the more limited model being proposed in NI 81-107 whereby “satellite” Independent Review Committees would be established to handle only conflicts of interest. Along these lines, we must respectfully disagree with the CSA’s position that the Board of Directors of a fund manager should not be allowed to act as the governance agency (IRC) since “there is an inherent conflict of interest”. This is simply not the case where the majority of Board of Directors members are independent of management and where there are other governance policies in place (as noted above) to ensure appropriate governance, both from the point of view of the management company and investors in the mutual funds. Therefore, we would recommend that the Canadian Securities Administrators re-think this part of the proposal.

Specifically, we would recommend that an exemption be made such that independent members of the Board of Directors of a mutual fund management company would be allowed to sit on an Independent Review Committee in cases where the company has a corporate governance structure that meets the following requirements:

- a minimum of 70% of the Directors of a mutual fund management company are independent of management (“independent” would be defined as in the CSA proposal),
- there is a separation of the positions of Chair of the Board of Directors and President,
- the Chair of the Board is an independent Director, and
- the Board conducts an annual self assessment and meets separately (without management) on a regular basis.

We would also encourage the CSA to look at broadening the scope of proposed NI 81-107 to include introducing requirements similar to those noted above for all mutual fund management companies. Given the events that have occurred in the mutual fund industry in the United States, as well as the general movement in Canada to strengthening corporate governance and accountability, we believe that the CSA has a unique “window of opportunity” to take more sweeping, decisive actions than outlined in the draft proposal. We would therefore urge you to seize this opportunity for the long-term benefit of both the Canadian mutual fund industry and the Canadian public.

Yours very truly,

John S. Rayner  
Chair  
Tradex Management Inc.

Robert C. White  
President  
Tradex Management Inc.

Enclosure

## Background Information on Tradex

Tradex Management Inc. (TMI) is the manager for Tradex Equity Fund Limited (TEF), an incorporated company under the laws of Canada and the manager and trustee for Tradex Bond Fund (TBF) and Tradex Global Equity Fund (TBF), which are unincorporated trusts formed under the laws of the Province of Ontario. Tradex Equity Fund Limited is one of the oldest mutual funds in Canada, having been incorporated in 1960.

TMI is governed by a 10 member Board of Directors and has entered into a management agreement with each of the three funds whereby it provides management services to the funds. TEF is also governed by a 10 person Board of Directors, who are the same individuals on the TMI Board.

Nine of the ten Directors of TMI are completely independent of the employed management team of the company (the President being the only employee of TMI who is a Director). Also, there is a separation of the roles of Board Chair and President, with the Chair being elected from among the independent Directors. The President (as well as the entire management team) is appointed by the Board and his/her services are retained, under good behavior, at the pleasure of the Board

TMI has share capital of 10 shares and each share is worth \$1. The shareholders, each of whom holds a 10% interest, are the Directors of the company. The management agreement between TMI and the three Tradex mutual funds provides that no dividends are to be paid by TMI during the term of the management agreement and that a shareholder on ceasing to be a Director of TMI must transfer his or her interest to the replacement Director. Directors of TMI receive a modest honourarium for their services. The bylaws of TEF provide that its Directors shall not receive any remuneration for their services.

Finally, the following statement is part of the management agreement between Tradex Management Inc. and the three Tradex mutual funds that it manages:

“Any surplus funds, after retaining sufficient funds to meet all operating, capital and regulatory requirements of Tradex, will be rebated pro rata to all mutual funds managed by Tradex based on the amounts paid to Tradex by such mutual funds. There can be no assurance that there will be any such rebates or as to the size of rebates.”

More information on Tradex is available through our web site at [www.tradex.ca](http://www.tradex.ca).

