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Re: Canadian Securities Administrators Proposed National Instrument 81-107 Independent Review Committee for Mutual Funds ("IRC")

PFSL Investments Canada Ltd. ("PFSL") is a registered mutual fund dealer with approximately 4,100 mutual fund registered salespersons across the country. PFSL is also the trustee, fund manager and principal distributor of the Primerica Concert Allocation Series of Funds ("Concert"), a family of fund of funds. PFSL has assets under administration in Concert of approximately $1.8 billion.

PFSL welcomes the opportunity to comment on proposed National Instrument 81-107 (NI 81-107). PFSL will limit its comments to its high level concerns. We have had the opportunity to review the detailed submission of the Investment Funds Institute of Canada and support those submissions.

Any initiative that might enhance investor protection is laudable. However, PFSL has concerns with the potential cost of establishing and maintaining IRCs, and with the anticipated negative impact on fund operations.

The costs to smaller funds of implementing and maintaining IRCs are uncertain and will likely be significant

We have reviewed the document entitled A Cost-Benefit Analysis on the Introduction of Independent Review Committees for Mutual Funds (Ontario Securities Commission, Office of the Chief Economist, January 2004).

As a smaller fund manager with a simple business model, we have very few potential legal and business conflicts and accordingly believe that any benefit to the unitholders of an IRC regime would be outweighed by the costs related to its implementation and ongoing operation. The Cost-Benefit Analysis accompanying NI 81-107 does not appear to support the proposal from the perspective of the small to mid-size managers. The set up and operational costs cited in the Cost-Benefit-Analysis could have a significantly negative impact on smaller funds and the ability of smaller firms to continue in business.

An additional regulatory investor protection regime must avoid being duplicative

It is difficult to see how IRC costs to smaller funds would be in the best interest of unitholders given the various other regulatory controls on conflicts and avenues for redress which exist in our current regulatory environment. With the controls currently in place, the proposal for an IRC may merely amount to an additional and redundant layer of regulation. Any IRC regime implemented should not be duplicative of other regulatory investor protection elements. Given the lack of detail with respect to the IRC mandate we are concerned that the costs of establishing an IRC together with the ongoing support costs and expenses that may be required will constitute a significant ongoing cost far in excess of any anticipated savings that might result from any reorganization and streamlining of regulatory requirements relating to conflicts of interest.

These costs may have a negative impact on management expense ratios for smaller fund managers. We do not believe that the costs of retainers, attendance fees for meetings, costs of insurance, independent advice fees incurred by the IRC, and the other miscellaneous expenses of the IRC are justified as an investor protection measure in the context of the management of our funds.

The mandate of the IRC is unclear and unwieldy to implement

Trading in mutual funds is, of course, time sensitive. Therefore, it must be clear to the fund manager and to the IRC, based on the fund manager's operations, which significant transactions or proposed transactions or business relationships should properly be within the IRC's conflict of interest review mandate. Otherwise, there would be delays leading to timeliness of trade issues.

We believe that the IRC's conflict of interest mandate as proposed is too broad and needs significant definition. As drafted, proposed NI 81-107 suggests that too many matters might constitute a conflict of interest that would require the manager to refer the issue to the IRC.

We submit that a knowledgeable IRC should be permitted to define the issues that could constitute a conflict of interest in the context of the manager's business model, considering its specific structure and existing business relationships with related and third parties.

It is unclear as to what type of relationship the IRC would or should have with respect to outsourced portfolio management functions such as a portfolio advisor in a fund of fund relationship. This should be clarified.

The proposal to give the IRC the authority to set its compensation and expenses to be paid from the funds could put smaller funds at a competitive disadvantage insofar as the manager may no longer be

permitted to absorb certain expenses to keep MERs down. Indeed, the proposed ability of the IRC to set its own compensation is problematic as it arguably puts the IRC in conflict with the fund.

The notion of "business conflicts" is too broad

We believe that the inclusion of the concept of "business conflicts" in the proposed instrument is inappropriate. The Commentary to proposed Rule 3.1 Conflicts of Interest, point 4, reads in part:

> … business conflicts would include situations where the manager may be motivated to favour one mutual fund over another mutual fund.
>
> . . .

This Commentary contemplates an extremely broad definition that would lead to uncertainty. For example, there is no guidance on how such a regulatory requirement would apply to fund managers of proprietary funds and principal distributors. The issue of business conflicts should be left to the IRC to determine in the general context of the manager's conflict of interest policies.

The definition of "independence" of IRC members is overly broad

We believe that the proposed definition of independence is overly restrictive and would create significant operational difficulties for many business models. Individuals should be permitted to act as IRC members notwithstanding the fact that they may have received some compensation for various services directly or indirectly from the manager or an entity related to the manager. For example, persons unaffiliated with a corporate group and serving as board members for sister companies should be permitted to be IRC members for a fund manager.

Appointment of IRC members

PFSL believes that it is appropriate for the fund manger to appoint IRC members and replacements beyond the initial appointment. These members will all be independent as ultimately defined. Fund managers are also trustees with fiduciary duties to operate the funds in the best interest of unitholders. The fund manager must have the right to assess experience and qualifications, and would be in the best position to choose the best persons for the mandate.

Conclusion

While the notion of increased investor protection in the context of mutual fund governance is certainly beyond reproach, our concerns lie in the fact that the proposed NI 81-107 raises the spectre of uncertain and potentially significant costs as well as operational disruption due to the uncertain mandate of the IRC.

Those are PFSL's comments, respectfully submitted. We thank you in advance for your consideration of our issues.

Yours truly,

Joe Yassi
Senior Vice-President, General Counsel & Secretary

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