



What are you doing after work?

May 7th, 2004

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

Dear Mr. Stevenson :

Re: Comments on the OSC's Fair Dealing Model ("FDM") Concept Paper

AGF Funds Inc. ("AGF") is pleased to provide its comments on the proposed FDM. As a member of the Investment Funds Institute of Canada ("IFIC"), AGF participated in IFIC's review and discussion on the FDM. While we support many of the comments made by IFIC in its comment letter on the FDM, AGF would like to provide some additional comments.

General Comments

As the Ontario Securities Commission ("OSC") is the sole supporter of FDM, we have significant concerns as to the practicality or likelihood of its adoption given the increasing call for regulatory harmonization in Canada. In addition, in the past few years, there has been a groundswell of regulatory change, yet the FDM does not seem to fully integrate these changes, as portions of the FDM are either duplicative or contradictory to items addressed by those initiatives. As many of these initiatives, including NI 81-106 [*Investment Fund Continuous Disclosure*] and consultation paper 81-403 [*Rethinking Point of Sale Disclosure for Segregated Funds and Mutual Funds*], are much further down the path in terms of CSA acceptance and industry consultation, we encourage the OSC to reassess the merits of trying to introduce yet another direction of change. Recently the industry seems to have been overburdened with proposed regulatory changes, to the point where it is increasingly difficult to see or understand the 'big picture' being painted for the industry. Perhaps more importantly, we question whether there is sufficient industry evidence to suggest the current system is so flawed as to require the complete overhaul recommended by the FDM. The changes proposed by the FDM are fairly dramatic and we question whether such change is truly required.

Disclosure

AGF fully supports transparent, meaningful and effective disclosure; however, it is essential to conduct a thorough cost/benefit analysis before implementing disclosure changes as ultimately the investor could end up facing higher costs, through higher MERs. For example, the FDM proposes several changes to investor performance reporting, many of which will rely on technology systems to deliver. It is important to price those system costs ahead of making the change, to ensure the cost of programming daily personalized performance returns can be justified and perhaps more significantly, to assess whether such changes are warranted. Investments in mutual funds should be viewed as a long-term investment, measured in years and months, not weeks or days, except in the case of money market and similar short term mutual funds. Daily personalized performance returns focus the investor on the short-term, discouraging long-term investing.

Four years ago, mutual fund companies spent a great deal of money and resources rewriting their prospectuses to comply with National Instrument 81-101 and its requirements for plain language. NI 81-101 was designed to enhance disclosure for investors and to make the “unwieldy prospectus” more readable and more useable by investors. Regrettably it appears that a significant majority of investors still do not read the prospectus. In effect NI 81-101 brought added disclosure and added costs but not necessarily the degree of sought after added benefit to investors that was originally envisioned. Given the NI 81-101 example, we caution against equating enhanced disclosure with better cost-effective disclosure. We suggest greater information should be obtained from investors as to what information they want to know and how best to present that information to them. Once we know what information they require and in what format, the industry can work to deliver this information in the most economical way.

Point of Sale Transparency

AGF supports point of sale disclosure and feels that the current form of prospectus offers investors and advisors much of the information needed to make an investment decision. However, given the unwieldy form of the prospectus, we suggest, as others have in the past, that the prospectus requirement be eliminated and be replaced by a more timely document. We suggest that the industry will need to standardize such a document to ensure all investors receive the same level of disclosure. If the form of the disclosure is not mandated a fund company should not be held responsible for its contents in the event an advisor changes that standardized content. Such a document would allow advisors to address any perceived conflict issues with investors as commissions and trailer fees could be identified on the document. To help with transparency we would support the suggestion of renaming the fees to better reflect their purposes – for example trailer fees could be called account servicing fees, or something that better describes their purpose. This point of sale disclosure document could be augmented with an annual disclosure document which highlighted any key changes in an investor’s portfolio – including changes to mutual fund holdings or changes in the advisor’s compensation.

We do not believe forcing investors to watch an educational video before opening an investment account is very practical or progressive. Having such videos available, much like an investment book sold in stores or made available at a library, could be worthwhile but the choice as to whether or not an investor reviews the video should be his or hers, not the industry's. We believe investors should be active participants in order to gain the greatest benefit. Many investors are already active and for those individuals who are not, we as an industry need to assist with the process; but this requires a willingness on the part of the investor.

Allocation of Responsibilities

We fully echo the comments made by IFIC on the issue of third party compensation and fund company responsibility for advisors and dealers. We agree that there should be a clear, documented allocation of roles and responsibilities among the investor, the representative and the firm, however we feel the industry already has a solid framework upon which to build. We do not feel mutual fund companies should be held responsible for the advice given by advisors simply because advisors receive compensation from those mutual fund companies. Forcing mutual fund companies to be responsible for advisors and dealers would further reduce the level of independence between those parties. In our view, the prospectus or any point of sale disclosure document adequately discloses the compensation paid by a mutual fund company to a dealer firm. To require either a transfer of liability from the dealer to the fund company or no compensation, suggests companies could only participate in the industry if they have a distribution affiliate. This result is, in our view, anti-competitive, counter to what we believe to be the best interests of the industry, and not the appropriate role of a regulator.

Conclusion

We appreciate the efforts of the Commission and those industry members participating in the working groups. We acknowledge the magnitude of the task at hand and are anxious to participate in the process of improving the industry. We would welcome the opportunity to review and comment on the next iteration of the model. If you have any questions regarding the foregoing please do not hesitate to contact us.

Yours truly,

"J. Goldring"

Judy Goldring
General Counsel and Senior Vice President