

May 7, 2004

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**Re: The Fair Dealing Model Concept Paper of the Ontario Securities Commission
(January 2004)**

We at Barclays Global Investors Canada Limited (BGI) thank you for your invitation to comment on the Fair Dealing Model Concept Paper (the "Concept Paper"). BGI, which currently manages over \$38 billion in assets, is one of Canada's largest and fastest growing investment managers. 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 the securities industry. We continue to be strong believers in the value of meaningful dialogue between regulators and industry participants and appreciate the ongoing efforts of the Ontario Securities Commission to work with industry participants and investors in its ongoing efforts to foster Ontario's capital markets.

We were originally supportive of the process that led to the release of the Concept Paper and were in fact active participants in the advisory committee referred to in the Concept Paper. We have come to have serious concerns with the proposal contained in the Concept Paper and with the process itself. Rather than address the specific questions set out in the Concept Paper we wish to focus on what we believe to be the significant issues it gives rise to with respect to the manner in which the OSC has gone about addressing what we believe are significant investor concerns.

Original Support

We strongly supported what we originally understood to be the premise underlying the initiation of the "*Re-Regulation of Advice*" project which was that the current "pillared" and approach to regulating various financial services no longer reflects the actual market structure. This "silo" approach to regulation, driven by either the type of "product" being sold or the type of firm supplying that product needed review to identify any perceived shortcomings. Further, we agreed with the interim conclusion that the most important failure of the current regime is that it is opaque to investors and there was a real issue with transparency, particularly in connection with the manner in which advisers are

compensated by clients, directly or indirectly, for their services. As noted above, senior management from our firm dedicated a significant amount of time to the advisory committee established to review these issues. We have made many submissions in the past in which we have described our view as to when regulation is needed and the type of regulation most appropriate in different circumstances. Based on that approach, we believe that an absence of transparency leading to an inability on behalf of one participant (in this case retail investors) to truly understand the products and services being offered and the benefits and, more importantly costs, of those products and services, is the type of market failure that absolutely requires regulatory redress. Most of the value of the proposed Fair Dealing Model comes from two disclosure initiatives. The first is the required disclosure of compensation received by the advisor or sales person and his or her organization. The second is the required calculation of personal investor rate of return. We agree that more transparency, better disclosure and a clearer understanding of the relationship between an investor and his or her adviser is the most appropriate way of addressing these issues.

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Process and Impact on Investors

Notwithstanding our initial support however, we have concluded that the Concept Paper itself, and the process by which it is being implemented, are actually acting as impediments to addressing the legitimate issues it identifies. We note that in the draft “Statement of Priorities for Fiscal 2004/2005” released by the Ontario Securities Commission for comment, states as its objective that the Fair Dealing Model be implemented by 2008. We find it very disappointing that a project that began in early 2000 has as its “objective” implementation of measures responding to clear needs only eight years later. From the perspective of an investor, one who could potentially benefit from the implementation of the proposals in the Concept Paper, we find it most disheartening that such pressing needs continue to remain unmet. Consider, for example, an investor with \$100,000 and a 20-year investment horizon, and suppose that greater transparency led the investor to lower their indirect costs from 2.5% per year to 1.25% per year. And further suppose that the selected investments return 8% per year prior to costs. That 8-year delay in achieving transparency would lower end-of-period wealth by over \$33,000, or close to one-third of the initial investment.

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The issues of transparency, costs, and the creation of a relatively level playing field could be addressed in an effective and expeditious manner through amendments to the current rules on disclosure. In fact, this approach would be consistent with many other initiatives currently underway at the OSC, such as proposed new rules for investment fund disclosure. However, as a result of the approach embodied in the Concept Paper, Ontario investors are being asked to wait at least eight years from the time the OSC began this process until there is any hope the OSC will address such obvious concerns as lack of transparency on adviser compensation. We strongly urge the OSC to reconsider the importance of the other aspects of the Concept Paper and whether they warrant the significant costs that will be borne by Ontario investors as a result of these transparency issues not being dealt with sooner solely as a result of the process and document components of the Concept Paper. Our view is that the implementation of these other process and document features in no

way warrants the ongoing failure to address real needs now. Those features could be considered later, if at all.

“Silo” Approach to Regulation

As noted above, we agree with the conclusion reached as part of the Fair Dealing Model process that the current approach to regulation, driven by either the type of “product” being sold or the type of firm supplying that product, should be replaced. The Concept Paper appears to acknowledge these concerns but then proposes a “fix” that consists entirely of creating new “silos” through the creation of four “model relationships”. The existing regulatory regime is based on a “model” of the industry that the OSC acknowledges is no longer appropriate. The Concept Paper simply proposes to break the current industry down into four “models” and lock those models in through regulation. We agree with the conclusion reached in the Concept Paper that regulation has been insufficiently responsive to industry evolution. However, we strongly disagree that the appropriate response to that concern is the establishment of four permanent regulatory “models” into which all advisory relationships will be required to fit. Rather than propose a solution that fosters innovation, creativity and responsiveness to investor needs, the Concept Paper would effectively “lock-in” the current types of relationships. It is disappointing that after more than four years of analysis the Concept Paper simply offers up new “silos” rather than a truly flexible regulatory approach.

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Harmonization Issues

In addition to our overriding concern that much needed changes to the current regime are being postponed as a result of the Concept Paper and the process surrounding it, we have other concerns about the Concept Paper as well. To a significant extent, these concerns relate to the inconsistency between the process surrounding the Concept Paper and the other harmonization initiatives of the OSC.

We find it quite surprising that the OSC, the Canadian securities regulator that has most openly and actively advanced the cause of regulatory harmonization is proceeding with such a dramatic change to the regulatory framework without the ongoing participation of the other securities regulators. This can only reflect a disagreement between the OSC and the other regulators as to the priority of the subject matter of the Concept Paper and we question why, with all the other pressing matters that the OSC could be addressing, it has decided to pursue this radically different approach. We note that representatives of the OSC have raised concerns with the fact that the British Columbia Securities Commission has acted “unilaterally” in pursuing what the BCSC sees as an important and appropriate restructuring of B.C. securities regulation. The Concept Paper appears to evidence an approach on behalf of the OSC very similar with the approach adopted by the BCSC in respect of its regulatory changes. We have been encouraged by the leading role taken by the OSC in pursuing harmonization and are dismayed at this abrupt departure from that approach.

We are equally concerned with the failure of the OSC to acknowledge the significant impact the Concept Paper could have on the structure of the financial services industry.

We are certain the OSC would acknowledge that the “pillared regulation” and “transparency” issues that were identified early on in the process apply equally to the non “securities dealers” with whom those dealers compete. While we have been encouraged by the OSC’s pursuit of harmonization with other regulators, particularly with insurance industry regulators, we are once again disappointed at the fact that the Concept Paper appears to evidence a shift from this approach. As noted above, we believe that the most significant issues identified in the Concept Paper could be addressed in a much less timely and complicated manner. If such a process had been adopted, it would be understandable that the delays inherent in seeking harmonization with other industry regulators would lead to a conclusion to implement the necessary changes first and work on harmonization later. Given the nature of the process surrounding the Concept Paper however, and the unfortunately long-term target for implementation, we find it quite surprising that the OSC determined not to work with other industry regulators. As much as there is a lack of transparency between the costs and benefits of similar products and services provided by different industry groups today, the Concept Paper will only increase the difficulty in comparing such products and services across industry sectors.

We believe that all investors, particularly retail investors would be better served if, rather than pursuing nearly decade long initiatives, the efforts of the OSC were focused on timely and effective measures to address real needs in a consistent way, with other regulators. We believe the Concept Paper and the process surrounding it are an unacceptable diversion from what should be the true priorities of the OSC at this time. Those priorities should include the transparency issues identified in the Concept Paper but those issues should be resolved rather than caught up in a process that doesn’t even have as its objective effecting any change for four more years.

III. CONCLUSION

We thank you again for inviting us to comment on the Concept Paper, we agree with the most significant issues it addresses and applaud you and the many industry participants who have been involved in the process to date for the serious thought that has obviously taken place. We strongly encourage you though to reconsider though whether the new documents and processes proposed in the Concept Paper (that are for the most part only more elaborate and complicated ways of addressing the important investor protection issues that could be addressed otherwise) warrant an ongoing failure to address those issues in a timelier manner. We look forward to discussing the Concept Paper 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,

A handwritten signature in black ink that reads "Gerry Rocchi". The signature is written in a cursive, slightly slanted style.

Gerry Rocchi
President
Barclays Global Investors Canada Limited

cc. Paul Moore, OSC
David A. Brown, OSC