



WESTCAP MGT. LTD.

August 17, 2005

BC Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorite des marches financiers
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

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

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Ontario Securities Commission
SECRETARY'S OFFICE

Comments Regarding Proposed National Instrument 81-107

To CSA Member Commissions,

We have reviewed the proposed National Instrument 81-107 and have the following comments:

In General

This instrument is an unnecessary, cumbersome and potentially expensive additional layer of regulation. After having reviewed 81-107, we find it hard to see what value, if any, these Boards will produce over and above a similar structure within the Board of Directors of a Fund. For the IRC to have a separate charter and the ability to set their compensation is administratively cumbersome and expensive with no real benefit to the end investor in any fund.

The conflicts that you are trying to address are typically witnessed in Funds where certain individuals occupy senior positions on the Fund's Board, the Fund's Executive, and the Investment Manager's Executive simultaneously and therefore have significant and material influence, good or bad, over the transactions of the Fund.

If you deal with these structures by requiring an IRC at the Fund Board level, and place certain restrictions on Investment Management staff and their duplication within the Fund's Board and Fund executive, you make far more progress than adding one more layer that can be controlled by the Investment Manager.

Our specific comments are provided below.

Specific Comments

Part 2 – Functions of the Manager

Section 2.1 Manager Standard of Care

- We agree with these definitions. They are also the measure for which current Directors of any Fund and the Officers of the Investment Manager are normally held to.

Section 2.2 Manager to have Written policies and Procedures

- Agreed.

Section 2.3 Manager to Maintain Records

- Agreed.

Section 2.4 Manager to Provide Assistance

- Under this section, the Manager has a lot of leeway to provide whatever information it wants. The assumption is full, true, and plain disclosure but if a manager truly wanted to skew the result it is possible to do so by filtering or giving a different tone to whatever communication is produced.

Part 3 – Independent Review Committee

Section 3.1 Independent Review Committee for Investment Funds

- We agree with the flexibility that this section allows.

Section 3.2 Initial Appointment

- This section goes against the whole concept of an independent review committee. Regardless of the manner in which any appointed members is independent, it is unlikely that people will be chosen who are not at least well known to the manager and at the very least are of like mind. In this way the manager can exert significant influence over the continued composition of the IRC.

- Unfortunately, in the absence of any Securities Commission mandated appointments, there really is no other way.

Section 3.3 Nominating Criteria

- Agreed.

Section 3.4 Written Charter

- We agree with the intent but state that an IRC within a Fund's Board of Directors could have the same effect and with less cost and bureaucracy. This is just another layer in an already expensive and over regulated industry.

Section 3.5 Composition

- Agreed.

Section 3.6 Term of Office and Vacancies

- Agreed.

Section 3.7 Standard of Care

- Agreed.

Section 3.8 Ceasing to be a Member

- We agree with this section except 3.8(1)(f) and 3.8(1)(g). Why should it matter who the new Investment Manager is? If the IRC is truly independent then they should just continue doing their job. Their responsibility is to the Fund's investors and not the Investment Manager.

Section 3.9 Authority

- The Fund's Board of Directors already has these powers and they also set their compensation. This is another unnecessary layer of regulation.

Section 3.10 Fees and Expenses to be paid by the Investment Fund

- We agree that the Fund should pay these expenses. However, we do not agree that an IRC is required at all and that these expenses are an unnecessary additional layer of expense to the investor for little if any actual benefit.

Section 3.11 Indemnification and Insurance

- Agreed.

Section 3.12 Orientation and Continuing Education

- Agreed.

Part 4 – Functions of Independent Review Committee

Section 4.1 Review of Matters Referred by the Manager

- Agreed.

Section 4.2 Regular Assessments

- Agreed.

Section 4.3 Reporting to the Manager

- Agreed.

Section 4.4 Reporting to Securityholders

- Agreed. With respect to 4.4(d) and 4.4(e) our issue is with the "if known" wording. This is why an IRC is redundant. First, the Fund's Board of Directors should be vigilant with respect to any conflict of interest and the Investment Manager must answer to them. If they are complicit in the conflict then there is not much that can be done and an IRC would likely never know about the incident.

- It is likely that an IRC will never know about a conflict that was deliberately perpetrated by an Investment Manager and/or a Fund Board until it is too late.

Section 4.5 Reporting to Securities Regulatory Authorities

- See comments on 4.4 above.

Section 4.6 Independent Review Committee to Maintain Records

- Agreed.

Part 5 – Conflicts of Interest Matters

Section 5.1 Manager to Refer Conflict of Interest Matters to IRC

- Agreed. It should be noted however, that sometimes an investment has to be made in a timely manner and the in the time it takes to write up the proposed action and receive an answer from the IRC, the opportunity could be missed and this is an added cost to shareholders.

Section 5.2 Matters Requiring IRC Approval

- Agreed.

Section 5.3 Matters Subject to IRC Recommendation

- Agreed.

Section 5.4 Standing Instructions by the IRC

- Agreed. This adds some reasonableness.

Part 6 – Exempted Transactions

Section 6.1 Inter-Fund Trades

- Agreed.

Section 6.2 Transactions In Securities of Related Issuers

- Agreed.

Part 7 – Exemption

Section 7.1 Exemption

- Agreed.

Section 7.2 Existing Exemptions

- Agreed.

In closing, we believe that this is an unnecessary piece of regulation that will only add cost for little or no benefit to the ultimate fund security holder it is designed to protect. We suggest strongly that this be required at the Board level of the Fund as an independent committee.

Sincerely,



Grant Kook
President/CEO