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**VIA: E-mail**

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
New Brunswick Securities Commission  
Registrar of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Superintendent of Securities, Newfoundland and Labrador  
Registrar of Securities, Northwest Territories  
Registrar of Securities, Yukon Territory  
Registrar of Securities, Nunanvut

c/o John Stevenson, Secretary  
Ontarion Securities Commission  
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And

c/o Anne-Marie Beaudion  
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**RE: Comments on the Proposed NI 81-107 Independent Review Committee for Investment Funds**

Dear Securities Regulatory Authorities:

We are pleased to submit our comments with respect to the Proposed NI 81-107 for your review. Firstly, we applaud the CSA for its thoroughness and due diligence in ensuring that they capture the various diverse ideas regarding this topic.

**Leith Wheeler Investment Counsel Ltd.:**

By way of background, Leith Wheeler Investment Counsel Ltd. has approximately \$5 billion in assets under management and is considered one of the few independent privately owned investment counsel/portfolio managers in Canada. We are also one of the few such companies that manage and market our own prospectus and private pooled funds. Our Funds are primarily sold directly through our Firm. Accordingly we do not have related party conflicts. To give you some perspective of our mutual funds, we manage 11 mutual funds of which 6 funds are prospectus cleared in the western provinces and Ontario. The Funds range from \$300 mm to \$2.9 mm in size. Our prospectus Funds are managed by our own portfolio managers and our third party custodian and trustee is CIBC Mellon. Our primary business objective is to ensure that our Funds meet the investment objectives established for each Fund. Each professional of the Firm is governed by our high professional standards and Code of Ethics which complies with the CFA Institute's Standards and Codes.

In the interest of time and efficiency we would like to address the issues which we think are the most critical to our business and impacts our unitholders the most. *The underlining message we would like the CSA members to capture is that not all mutual fund companies are the same and applying the same rules to each company will ultimately mean that some companies bear unnecessary costs to protect investors from the weakest link in the chain.* Not all public mutual funds face the same conflicts, and costs for "standard" independent review committees are not the same for all public mutual funds.

**Independent Ownership / No Related Party Conflicts:**

We consider our investment funds to be small, but more importantly, we, as manager of the Funds, do not have related party conflicts. We have a third party custodian and trustee for the prospectus Funds. We do not have any other "side businesses" that would cause a conflict such as underwriting or a brokerage arm. Our interests are aligned with our unitholders. If the Funds perform well, our unitholders benefit and ultimately, we do also, as portfolio managers. Our Funds are no-load and our MERs are one of the lowest in Canada. Our managers are not compensated with bonuses if the Funds perform well. Majority of the compensation is through shareholdings of the Firm. Furthermore, we currently do not charge any operational fees such as audit or legal or incentive fees to the Funds which a majority of all other Funds charge.

We do not see the benefits of having an external independent review committee. We feel that we know our business better than an outside committee member would and do not face the conflicts of interest that other larger fund managers have.

We agree that in the case of larger investment funds where obvious conflicts can occur that having a formal process of reporting is vital in the best interest of the unitholders. In larger environments, where the portfolio manager's interest may not be aligned with the Funds, it is important to have a formal reporting process to deal with issues that are true or perceived conflicts. Of course in cases where investment funds are owned by larger institutions, it's also important to have in place an independent body to deal with "structural issues". Leaving it up to the management of the parent company to decide if a conflict exists can cause perceived, if not, actual conflicts to occur. One can not serve two masters without compromising one of them.

### **Costs/benefits analysis:**

Based on your costs/benefits analysis, the range of operational cost of an IRC of between \$50,000 to \$ 250,000 is a significant expense. As discussed above, our Funds range from \$300 mm to \$2.9 mm in size. Typically, the Funds would absorb the costs of an IRC; however, we do not believe that the size of our Funds or the structure of our organization would justify this significant expense which would be borne by the unitholders for minimal benefit. If we can not justify the benefits of an IRC we ultimately can not justify having the Funds absorb these costs. Furthermore, whether the Fund is \$1 mm or \$ 1 billion in assets, it does not diminish the basic due diligence the IRC must go through to ensure that their mandate is fulfilled. Therefore, smaller funds may have fewer conflicts of interest to address but it does not eliminate a base cost of setting up an IRC. We believe that the cost of an IRC can be amortized across a family of funds and the economy of scales can reduce the cost each fund bears. However, if there are only a handful of Funds and the assets under management are small, these costs will have a significant impact on all small funds and the unitholders. Ultimately it will result in lower returns for our unitholders.

We also believe that the set up cost of an IRC depends on the structure, the type, the size and the number of investors in the fund. In our business, we focus on few accounts with large account sizes. Our minimum threshold is \$25,000 per account and our strategy is to encourage investors to maintain a high threshold with a long-term perspective in the Funds; hence, this allows us to minimize costs passed onto the unitholders.

In the proposal you had suggested that the members of the IRC are initially appointed by the fund manager and then the IRC would make all appointments. The IRC would also develop a written charter that sets out, among other things, the compensation of its members and advisors. Potentially this could create a conflict of interest as there would be a committee reporting to no one but itself that determines its own compensation. This could prove very costly to unitholders.

### **Mandate of the IRC:**

We agree that for funds where an IRC is required, giving the committee the power to approve certain transactions and resolve any conflicts that may arise is vital. However, allowing the fund

manager to proceed without a positive recommendation of the IRC should require the fund manager to obtain approval by the unitholders before the effective date of the action rather than have them only notify the unitholders.

We believe having the IRC communicate directly with the securities regulatory authorities and issuing a report annually would benefit all unitholders. This process should only apply to certain funds. In the case of our Funds, it would not make sense to have an IRC because conflicts such as transactions in securities of related issuers and purchases of securities underwritten by related underwriters would not occur in our situation. Again, having an IRC to provide us with comments on “non-issues” would not be meaningful.

### **Liability of the IRC Members:**

Limiting the scope of the IRC’s mandate may limit the IRC’s corresponding fiduciary duty and duty of care. However, this will have marginal difference on the premiums paid for such liability insurance. Our past experience in this area is that insurance companies with no experience in this field will be very hesitant to reduce premiums even if the liability of the IRC is limited. Furthermore, it will depend on the scope of the mandate.

### **Quality of IRC Members:**

Leith Wheeler’s Funds are based in Vancouver, BC. Geographically, the scope of the candidates available in the west coast is more limited than in the east. Trying to obtain good quality candidates with in-depth knowledge of how mutual funds operate and the types of conflicts that occur will be very challenging. If cost of travel and organizing committee meetings means having various members from various parts of the country, this will only add costs to the IRC which for us would be an additional burden to a committee that would not benefit the Fund or the unitholders.

In summary, not all public mutual funds face the same conflicts, so an independent review committee is not required in all cases. In addition the costs for a “standard” independent review committee are not the same for all public mutual funds. We appreciate the efforts of the CSA in allowing us an opportunity to express our opinions and if you require additional information, please do not hesitate to call the undersigned at 604-602-8360.

Yours truly,

**Leith Wheeler Investment Counsel Ltd.**

*“Cecilia Wong”*

Cecilia Wong, CA, CFA  
Chief Financial Officer