PFSL Investments
Canada Ltd.
Suite 300, Plaza V, 2000 Argentia Road
Mississauga, Ontario L5N 2R7
Te: (905) 812-2900;; Fax: (905) 813-5310

John A. Adams
Executive Vice-President & Chief Financial Officer
Direct Line: (905) 813-5345
Email: johnA.Adams@primerica.com

August 25, 2005

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marches 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, Nunavut

c/o Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario M5H 3S8
Email: jstevenson@osc.gov.on.ca

And to:

Ms. Anne-Marie Beaudoin
Directrice du secretariat
Autorité des marches financiers
Tour de la Bourse
800, square Victoria
C.P. 246 22 étage
Montreal, Quebec H4Z 1G3
Email: consultation-en-cours@lautorite.qc.ca

Dear Sirs and Madames:

Re: Request for Comment on the Canadian Securities Adminstrators proposed National Instrument 81-107 Independent Review Committee for Investment Funds ("IRC")

We are writing on behalf of PFSL Investments Canada Ltd. ("PFSL") 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"). PFSL has assets under administration in Concert of approximately $2.0 billion. PFSL is a member of Citigroup Inc., a global leader in the financial services sector.

PFSL welcomes the opportunity to comment on the proposed National Instrument 81-107 ("NI81-107") and has made previous submissions to the Canadian Securities Administrators ("CSA") care of the Ontario Securities Commission and the Commission des valeurs mobilières du Québec, in April of this year.

While PFSL welcomes any initiative that might enhance investor protection, we have serious concerns with the potential cost of establishing and maintaining IRCs, and with the anticipated negative impact on fund operations.

Costs: Inadequate cost-benefit analysis results in reduced quality of rulemaking

We are not alone in our concern that the CSA failed to undertake an adequate cost-benefit analysis prior to the decision to propose a new governance rule.

Financial regulators are obliged to perfom rigourous analysis (often required of other industry sectors and government agencies, such as health, safety and environmental regulation). The CSA's shortfalling here is of peculiar concern and "arguably its conduct… better resembles an appendage to an already-determined course of action than an integral part of the policy-making process."[1]

The benefits of investor protection must be commensurate with the attendant costs that will result from this proposal and an objective evaluation of the true costs of the proposal has been preempted by the CSA's assumption that mandatory fund governance is necessary for all fund managers. The CSA has an obligation to apprise itself of the economic consequences of a proposal before it decides whether or not to adopt it and this analysis must include giving due consideration to alternatives.

Conflicts: Ambiguous, overbroad mandate and unwieldy implementation

In the proposed instrument, large portions of substantive information is contained in the Commentary sections and not in the actual rule (for example section 3.1 – Commentary on transactions that constitute business conflicts or related party transactions). This creates uncertainty as to the legal status of these sections, contributes to the ambiguity of the mandate of the IRC, and raises concerns regarding unwieldy implementation thereof.

The inclusion of the concept of "business conflicts" in the proposed instrument is inappropriate in that it contemplates an extremely broad definition that can only 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.

Current regulatory requirements mandate services that the fund manager must provide the fund. It is also not uncommon for a manager to be related to, or itself act as, the portfolio manager, back office administrator and/or trustee. Thus, potentially almost every issue has the potential for conflict, and would fall under the scope of the IRC for review – raising the spectre of an unacceptable level of micro-management. We believe that the issue of business conflicts should be left to the IRC to determine in the general context of the manager's conflicts of interests.

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[1] Sherwin, Edward. *Cost Benefit Analysis of Financial Regulation: Why dollars don't always make sense in SEC Rulemaking*. Harvard Law School, JD work requirement, 27 April, 2005 at p.72.

We also believe that the conflict of interest mandate as proposed, in section 3.1, is too broad and greater attention needs to be given its definition. Trading in mutual funds is time sensitive. It must be very 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.

Further, the CSA has not considered whether the definition should contain a "materiality" test – the issue being whether a reasonable person would consider the manger to have an interest that could influence the manager to take a particular action that is different from the action it would take solely considering the best interests of the mutual fund.

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

Conclusion

As noted, above PFSL has made previous submissions regarding this proposed instrument. This submission is not intended to be duplicative, rather, we wish to reiterate our concerns and provide subsequent commentary given developing industry awareness and understanding of the issues and concerns involved.

We understand the overall objectives and role that the CSA has contemplated for the IRC and we support enhanced investor protection through independent oversight. However, with the industry controls currently in place, the proposal of the IRC may merely amount to an additional and redundant layer of regulation.

Given the lack of information generally available and the deficiency of detail with respect to the IRC mandate we are very concerned that the costs of establishing an IRC, together with the on-going costs and expenses that may be required, will constitute a significant ongoing cost in considerable excess of any anticipated savings or benefits – savings and benefits as yet to be adequately ascertained beyond mere presumptions.

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

Yours very truly,

John A. Adams
Executive Vice-President
& Chief Financial Officer

JA/jmr