August 25, 2005

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorite 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

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Email: jstevenson@osc.gov.on.ca

and to:

Anne-Marie Beaudoin
Directrice du secretariat
Autorite des marches financiers
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Re: Proposed National Instrument 81-107 – Independent Review Committee ("IRC") for Investment Funds

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BMO Investments Inc. ("BMOII") appreciates the opportunity to offer comments with respect to the Canadian Securities Administrators (the "CSA") Proposed National Instrument 81-107 – IRC for Investment Funds (the "Proposed Rule"), as republished in revised form. Five years ago BMOII participated in the initial fund governance survey,

and since that time, we have worked as part of the Investment Funds Institute of Canada Fund Governance Committee/Independent Review Committee to help provide further suggestions and insights into the issues of fund governance during the preparation of the CSA's 2002 Concept Proposal 81-402 as well as the 2004 version of the Proposed Rule.

We strongly support the CSA's efforts to promote investor protection in investment funds and to foster market efficiency in a practical manner. As such, we favour the establishment by the CSA of a requirement that all investment fund managers be subject to the independent oversight and monitoring of an IRC. In fact, for many years now, we have had in place an independent governance agency that acts on behalf of our unitholders to provide independent monitoring and oversight of our management activities.

While we continue to support the CSA's efforts to improve investment fund governance, we do have some concerns with the Proposed Rule and wish to offer the following comments:

Conflict of Interest Matters

The definition of "conflict of interest matter" in Part 1.3 of the Proposed Rule is far too broad. It goes beyond the related party transactions and self-dealing provisions that are currently prohibited in securities legislation and includes a manager's business and commercial decisions made on behalf of the investment fund.

We suggest that the CSA limit conflicts to those subjects that are currently prohibited under securities legislation from the Proposed Rule and, at the very least, add a materiality threshold to the definition of "conflict of interest matter". Without such a materiality threshold, there could be matters that amount to "conflict of interest matter(s)" in accordance with the definition, that are not sufficiently important or material to warrant referral to or consideration by the IRC.

Functions of IRC

Part 4.1, subsection (3) requires the IRC to deliberate and decide on a conflict of interest matter referred to it in the absence of the manager or entity related to the manager. That non-members cannot be present when the IRC deliberates and decides on a matter referred to it is impractical, especially when combined with our concern that a very large number of issues may have to be referred to the IRC.

As previously mentioned, we have had in place an independent Board of Trustees (the "Trustees") for many years. In practice, Trustee meetings consist of presentations by representatives of the manager and a "cross examination" of these representatives by the Trustees until they are satisfied that all necessary issues have been appropriately considered. Often, the Trustees debate issues in a meeting and if they cannot come to a position on the matter they will ask management for further input and/or clarification. In the case of business conflicts particularly, having management representatives present to

provide information and for questioning would be critical for an IRC to be able to form their recommendation and to understand both the issues and management's recommendation.

We believe it would be awkward and unnecessarily prolong the decision-making process if management had to leave the room every time the Trustees were to decide on a matter as contemplated in the Proposed Rule, particularly when multiple issues are being considered at one meeting.

In addition, the secretary for the Trustees, who is responsible for recording the minutes of the meeting, is also the secretary of an entity related to the manager. We would ask the CSA to clarify whether the IRC would have to have one of its members perform the secretarial function or hire its own independent secretary as the current secretary could not be present during the decision making process according to the Proposed Rule.

For the above-mentioned reasons, we suggest that the CSA remove Part 4.1, subsection (3) from the Proposed Rule.

Regular Assessments

In our view, the annual self-assessment to be performed by the IRC in Part 4.2, subsections (2) and (3) adds no value to the IRC process. If the CSA is trying to ensure that the IRC is effective as a committee, this is not the way to go about it. The IRC's effectiveness will continually be tested as each new conflict of interest matter is referred to the IRC for its approval or recommendation. It will become evident over time whether the level of complexity of issues raised is beyond the competency and knowledge of any member. Furthermore, attendance and participation at meetings will be evident to all participating members and will be captured in minutes of the meeting, without the need for an annual review by the IRC.

Any concern about having competent individual IRC members is sufficiently addressed by Part 3.3 of the Proposed Rule, which requires the manager to consider prior to appointment, the competencies and skills of each member and the competencies and skills they would bring to the IRC.

Authority

Just as we see the appointment of the IRC as a prudent check on the activity of the fund manager, in considering appropriate rules regarding the appointment and compensation of IRC members, we believe that the CSA must be careful to ensure prudent checks are also in place to guard against abuse and/or conflicts of interest by IRC members. We believe the fund manager should be responsible for the appointment of all IRC members, not just initial members as indicated in Part 3.2 of the Proposed Rule. We believe that placing the power to appoint in the hands of the manager may act as an appropriate safeguard on the IRC. For example, we recognize that allowing the IRC members to set their own compensation, as contemplated in Part 3.9, subsection (1)(d) of the Proposed Rule, creates an opportunity for abuse by the IRC members. However, we do understand

concerns that an appearance of bias may result if the manager is allowed to set the salaries of those hired to supervise it. While not perfect, we believe that the ability of the manager to appoint IRC members will provide some check or assurance that the majority of IRC members will be able to reasonably police the activities of any 'rogue' member. We also believe that the appointment of IRC members by the fund manager would serve as a check to make it less likely that 'rogue' members could self perpetuate, or over time, form a majority.

In the alternative, we suggest that the fund manager at least be responsible for nominating IRC members with the IRC ultimately making the final decision on whether to accept or reject a nominee.

Meaning of "Independent"

We favour the CSA's new principles-based approach to determining independence.

Further Information

We thank you for the opportunity to submit our comments and trust that they will be given due consideration.

Should you have any questions, please call Darcy Lake, Chief Compliance Officer at 416-867-5724 or Kim Cadario, Senior Legal & Policy Counsel at 416-867-6455.

Yours truly,

"signed"

Darcy Lake
Chief Compliance Officer