August 25, 2005

To:

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, Nunavut

Via E-mail
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and

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Re: Revised Version of Proposed National Instrument 81-107 ("Proposed Rule") - *"Independent Review Committee for Mutual Funds"* ("IRC")

Thank you for the opportunity to provide comments on the revised version of the Proposed Rule. For your information, attached is a copy of the letter that Guardian Group of Funds Ltd. ("GGOF")

forwarded to the British Columbia Securities Commission ("BCSC") in response to the additional questions raised by the BCSC in their local cover Notice. While we support the CSA's initiatives to improve mutual fund governance, GGOF continues to have concerns with the Proposed Rule and wishes to offer the following comments which are set out below.

Application of Proposed Rule to Investment Funds

As indicated in GGOF's response to the initial draft of the Proposed Rule and reiterated in GGOF's letter to the BCSC attached hereto, GGOF's position is that a fund manager should be required to have an IRC only if it intends to engage in transactions that are prohibited under Part 4 of NI 81-102. As discussed in our previous comments, GGOF is of the view that the cost-benefit equation relating to the creation and ongoing operation of an IRC does not favour investors. There are less costly and burdensome ways to manage any potential conflicts that are not already covered by Part 4 of NI 81-102. For example, a fund manager could develop policies and procedures dealing with all matters that may involve a possible conflict of interest. These policies and procedures could then be reviewed and approved by either an IRC or an independent auditor which would also review and approve subsequent, periodic compliance reporting on these policies and procedures.

Conflicts of Interest

Under section 5.1 of the Proposed Rule, all conflict of interest matters must be approved by an IRC prior to the manager taking action, subject to getting "standing approval" for certain actions or categories of actions as now provided for in section 5.4 of the Proposed Rule. It is GGOF's view that allowing for "standing instructions" to be obtained from an IRC for certain activities, while an improvement on the initial draft of the Proposed Rule, would not significantly make the IRC more practical or economical to operate. It is noted that the Proposed Rule now also requires the IRC to monitor and assess, at least annually, the fund manager's written policies and procedures related to conflict of interest matters, and to monitor the manager's compliance with the IRC's instructions on these matters. These additional review and reporting responsibilities, along with the broad definition of a "conflict of interest matters" that the IRC is required to address, will offset any potential benefit related to allowing "standing approvals".

Since all conflict of interest matters (irrespective of how material or significant) must be referred to the IRC for either a positive or negative recommendation, or approval, the IRC will have to become involved in every facet of the manager's business, including accounting, operations, investment management, legal and compliance. In particular, the IRC would be approving standing instructions or providing "one off" approvals, as well as reviewing and assessing the adequacy and effectiveness of the manager's written policies and procedures on an ongoing basis, including compliance with such instructions, or with any amendments to such policies and procedures for all areas of the business. When considering the scope of these responsibilities, and the processes and procedures the IRC will be required to follow under the Proposed Rule, it is GGOF's view that it would impose an unrealistic burden on IRC members and may encourage a "form-over-substance" approach, where large volumes of due diligence material (including policies, procedures, compliance certificates and checklists) are generated. However, because of the large volume and range of issues that must be addressed, it will be extremely difficult for the IRC to perform an in-depth review and offer substantive input on any given

matter, unless it were to meet on a daily basis or rely extensively on external consultants. This will likely result in significant cost expenditures and will also have a negative impact on the ability of the manager to make business decisions in a timely and flexible manner.

IRC Approval

The Proposed Rule and related amendments to NI 81-102 require certain matters be subject to a securityholder vote as well as a determination on the issue by the IRC. For example, any change to the basis of the calculation of a fee or expense to be charged to a fund that could result in an increase in the charges of the manager to the fund for costs incurred in operating the fund, would require both an IRC recommendation and securityholder approval. It is GGOF's view that such a change should not be required to be approved by shareholders if it is approved by the IRC. This is consistent with allowing other changes without securityholder approval (such as a transfer of assets or a change of auditor) if IRC approval is obtained. If the CSA is comfortable that IRC oversight and approval can be an effective tool in addressing conflicts of interest in various other transactions, IRC approval should be sufficient in this context as well. To require both an IRC recommendation and securityholder approval would be unduly expensive and time consuming. IRC approval, coupled with providing 60 day's advance notice to securityholders and allowing securityholders to switch to another fund without cost if they choose, would adequately protect investor's interests, but without the delay and expense of a securityholder meeting.

A Term of Office and Vacancies of IRC

Section 3.1 of the Proposed Rule provides that the manager must appoint each member of the IRC. Section 3.6 requires any vacancies in the IRC to be filled by the IRC. GGOF believes that the manager should be entitled to appoint all members of the IRC, not just the initial members. This is particularly important in light of the authority given to the IRC to set its own compensation and to retain and compensate independent counsel or any other advisers it deems useful or necessary.

These provisions will effectively allow an IRC to operate and incur costs without any meaningful checks or balances. While it is important to ensure that such a committee will in fact operate with any undue influence from the manager, it is equally important to have checks and balances to ensure a dysfunctional IRC cannot perpetuate itself indefinitely. While the IRC must consider the manager's recommendation with respect to setting compensation and expenses, the IRC is not required to follow them. GGOF is of the view that a more reasonable approach would be for the manager to be responsible for appointing and compensating all IRC members and their advisers, but only after taking into account the recommendations of the IRC. Requiring the IRC to disclose instances where it does not follow the recommendations of the manager in setting compensation and expenses, as provided in section 4.4(c) of the Proposed Rule, does not adequately address this issue. It is unlikely that a manager, that reports to and is accountable to the IRC in relation to so many aspects of its operations, would present compensation recommendations that may not be acceptable to the IRC, thereby requiring the IRC to disclose its failure to accept the recommendations in a report to securityholders.

Key Governance Practices of the IRC

GGOF is of the view that it is not necessary to include provisions relating to the appointment of the Chair of the IRC, the role of the Chair, nominating criteria for the appointment of IRC members, continuing education, regular self-assessments and reporting obligations for a committee whose every member is already required to be independent. Requiring IRC's to comply with these procedural requirements will simply add to the costs of establishing and maintaining the IRC. At most, these provisions should form part of the Commentary to the Proposed Instrument as suggested practices. It should be left to the IRC, to ultimately determine which specific governance practices to adopt, based on its knowledge of and its working relationship with the manager.

Yours truly,

(Signed) "Jeffrey Meade"

Jeffrey A. Meade
Vice President, Legal