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September 1, 2005

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

c/o

Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
M5H 3S8

Attention: John Stevenson, Secretary

- and -

Autorité des marché financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22 étage
Montréal, Québec
H4Z 1G3

Attention: Anne-Marie Beaudoin, Directrice du secretariat

Re: Proposed National Instrument 81-107 – Independent Review Committee for Investment Funds (the "Proposal")
Response to Request for Comment

I am the General Counsel of Frank Russell Canada Limited and am writing on their behalf.

This letter is being provided in response to your request for comments on the Proposal.

It is not clear to us that there will be any substantial benefit to the unitholders as a result of this Proposal. The funds will be required to spend money on operational procedures and compliance reports, and the cost of outside counsel to ensure compliance with the new requirements. In addition, the funds will pay the compensation of the IRC members, the insurance and other

expenses such as independent legal counsel for the IRC committee members. Ultimately all of these costs will be borne by the unitholders.

Having an independent review committee ("IRC") is no guarantee that the investors will be protected as there are numerous continuing examples in the corporate world of independent directors who failed to protect the investors. Layered on top of this is the fact that the mutual fund industry is complex and it will be difficult to find IRC members who have expertise. The selection of IRC members for a mutual fund is not the same as selecting board members for other business organizations because there will be a much smaller pool of people to draw from. Therefore, it is possible that fund complexes may appoint IRC members who are independent and well intentioned, but who will not have the expertise to contribute in a meaningful way.

We feel that the issues surrounding conflicts of interest can be addressed by additional disclosure followed by increased regulatory or other audits. This would provide for oversight by persons with expertise and knowledge.

Notwithstanding that we do not support the rule, we would like to make the following comments relating to the technical drafting of the rule.

We would suggest that once an IRC is established, there should be no need to obtain regulatory approval on any conflict issue. It is not clear whether some conflicts have been omitted from the rule deliberately, because they are substantial and require regulatory approval, or whether their omission is inadvertent. Set out below are some examples which seem to require regulatory approval (in some cases in addition to IRC approval), notwithstanding the creation of an IRC and which appear to be omitted through inadvertence, not because of significant policy concerns.

1. Expansion of Section 6.2 to cover all Investments Prescribed by Conflict of Interest Restrictions.

As currently drafted, the exemption from the application of the "mutual fund conflict of interest investment restrictions", provided for in subsection 6.2(2) is only available for investments referred to in subsection 6.2(1). The investments referred to in subsection 6.2(1) are investments in the securities of an issuer related to it, its manager or an entity related to the manager ("Related Party Investments").

The investments which are prohibited under the "mutual fund conflict of interest investment restrictions" are much broader than the Related Party Investments. Here are a couple of examples:

- if an insurance company holds more than 20% of the assets of a fund (which occurs in some cases where the insurance company is administering defined contribution retirement savings through a segregated fund), then the mutual fund will be precluded from buying securities of the insurance company even though the insurance company is not related to the fund or the manager.

- we obtained an exemption from the "mutual fund conflict of interest investment restrictions" to permit certain of the funds we manage to invest in related parties to entities which were distributing those funds under distribution contracts. The entities distributing the funds were RBC Dominion Securities Inc. and TD Securities Inc. As a result of the mutual fund conflict of interest investment restrictions, the fact that the funds had entered into these distribution contracts

precluded the funds from purchasing securities of the related banks of those entities.

We request that the Canadian Securities Administrators consider extending the exemption from the application of the "mutual fund conflict of interest investment restrictions" in section 6.2(2) to include these types of investments provided these investments are subject to the same conditions as proposed for Related Party Investments (i.e. IRC approval, purchase on exchange and regulatory reporting). We submit that this type of change would be entirely appropriate for the following reasons:

- In the examples cited above, the conflict is less apparent and would be less likely to influence the manager than in the case of a Related Party Investment. In each of the examples, the conflict which arose was with a third party. Because the third party is arm's length to the manager, the conflict would be less likely to influence the manager in its decision-making process.

- To the extent these situations do raise conflict concerns or the perception of a conflict, the requirements that there be IRC approval, that the purchases be made on an exchange and that there be regulatory reporting provide adequate protection.

- The relevant regulators have provided relief from these types of conflicts in the past. See *AIM Funds Management Inc. et al. (2003) 26 OSCB 6744* and *Frank Russell Canada Limited et al. (2001) 24 OSCB 3280.*

- If this change is not adopted a rather nonsensical result would occur. In the event of these transactions, a fund manager would have to send the conflict to the IRC for its recommendation and apply for relief from the "conflict of interest investment restrictions".

One suggested approach to implement this change would be to revise subsection 6.2(1) by replacing the words "in the securities of an issuer related to it, its manager, or an entity related to the manager" with "prohibited by the mutual fund conflict of interest investment restrictions".

Note also that subsection 5.2 (1) (b) refers to "a related issuer as described in section 6.2," but in fact there is no description in section 6.2.

Section 6.2(1) also uses the phrase "an issuer related to" but there is no definition of "related".

2. There is no exemption from s. 117 of the *Securities Act* (Ontario) and similar provisions in other securities legislation. This could lead to the result that although the IRC approved the transaction, the fund is still required to file monthly reports of the transaction, or apply for an exemption. This is notwithstanding that reporting of related party transactions must also be included in the management reports of fund performance (see Item 2.5 of Form 81-106FI). We would suggest that the rule be revised to state that if the IRC has approved a transaction, no reports under s. 117 of the Act (and similar provisions in other provinces) need to be filed. For your reference we note that NI 81-102 does have a defined term for "mutual fund conflict of interest reporting requirements" which could be used for these purposes.

3. The exemption from the application of the "mutual fund conflict of interest investment restrictions" applies only if a purchase is made on an exchange. Section 6.2, therefore, would not

apply for non-exchange traded derivative transactions (such as forwards). That means that regulatory approval may be required for these types of derivative transactions notwithstanding the review and approval of an IRC. Was this the intention of the CSA? We suggest this issue be clarified in the rule.

We also note that the consequential amendments to NI 81-102 did not address this issue. Notwithstanding IRC review and approval, a regulatory exemption would also have to be sought under section 4.2 of NI 81-102 for these types of derivative transactions. We submit that, if IRC review and approval has been obtained, there should be no need to seek exemptions under section 4.2 of NI 81-102. The consequential amendments to NI 81-102 should be revised to provide an exemption from section 4.2 where IRC approval and review of a transaction has occurred.

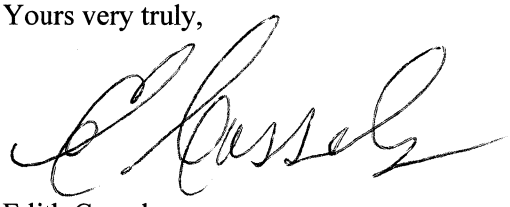
4. The definition of an "entity related to the manager" in section 1.4 is too broad. Was it the intention of the regulators to catch agents such as custodians and transfer agents? If a fund has five subadvisers, is the fund required to go to the IRC if one subadviser is buying securities which are related to a different subadviser? Any conflicts of interest experienced by a third party portfolio manager are not conflicts of the manager of the fund and therefore it is inappropriate to require that these be referred to an IRC.

There may be situations in which the dealer is acting as an agent for the manager of the fund, and so the fund would be prohibited from investing in an issuer which is related to the dealer. Was that the intended result?

We submit that only part (a) of the definition of an "entity related to the manager" is necessary.

Thank you for your consideration of these comments.

Yours very truly,



Edith Cassels
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