

August 14, 2011

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, ON M5H 3S8
Fax: 416-593-2318
E-mail: jstevenson@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax : 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

Comment letter on the CSA Investment Fund Modernization Project:

http://www.osc.gov.on.ca/documents/en/Securities-Category8/csa_20110526_81-322_rfc-phase2-proposals.pdf

We unfortunately missed the July 25th submission deadline because we were unaware of the existence of a Request for Comments. However, to the extent you may find it useful, we offer the following:

1. Modernization must also include addressing the advice side of the business. Investors face risks in dealing with advisers that are on a par with the risks associated with the securities themselves. See MoneySaver article entitled “Adviser Risk”. We have long promoted a fiduciary duty for those holding themselves out as Advisers. We quote from the FDM OSC Concept Paper : “ *We continue to regulate most registrants on the basis of the products they sell, even though investors, firms and the courts consider the relationships formed and the advice given to be far more important than the actual sales transactions. The regulations allow an unacceptable lack of clarity which contributes to many of the problems in relationships between investors and advisers. Most retail financial services, including investment advice, are delivered by firms registered as dealers and their individual representatives. But the OSC’s regulations only focus on advice as a business activity for a limited number of portfolio managers, investment counsellors, and newsletter publishers.* ”

2. Closed -end funds [CEF's] should provide stronger plain language disclosure as to how IPO proceeds will be utilized. We have noticed that an emerging trend is for a CEF IPO to be followed by a conversion to a open-ended mutual fund a short time later. This appears to be a tactic to start a mutual fund on the backs of the CEF investors. It merits regulatory attention.

3. Fund governance for ETF's/CEF's is inadequate just as it is for mutual funds. NI81-107 IRC's in CEF's have treated investors with disdain and IRC's have done nothing to stop it. The Citadel and Sentry Select cases are good examples where improved regulations and intervention would have assisted retail investors..A fundamental change in regulatory approach is required to protect investors.. IRC's have proven to be nothing more than an automated method to bypass regulatory oversight and investor participation in Key issues. A copy of of our views on IRC's has previously been sent to you.
4. Disclosure is a necessary but insufficiently effective protection tool. Regulatory enforcement is required with meaningful sanctions and fines.
5. A new product Committee of the CSA (or OSC) should be established with strong investor membership.
6. The NAAF/KYC/ suitability regime is broken and needs to be repaired otherwise all attempts to provide investor protection will fail.
7. OBSI has to be better supervised and protected from investment dealers. There should be CSA oversight of OBSI.
8. Products such as PPN's should be part of securities regulation or else regulatory arbitrage will occur.
9. Exempt market dealers should be required to be part of an SRO and that SRO must be a OBSI participant.
10. There should be investment restrictions for ETF's [non-redeemable funds] with a clear dividing line between those offered to the retail public and those that are tied to sophisticated investor rules. The boundary at present is somewhat hazy.
11. Fund Facts will require significant improvement particularly in the are of risk disclosure.

Should you require any additional information, do not hesitate to contact us.

We agree with the public posting of this Comment letter.

Sincerely,

Ken Kivenko P.Eng.
President
Kenmar Associates
(416)-244-5803
kenkiv@sympatico.ca

