

BY EMAIL: comments@osc.gov.on.ca



January 11, 2016

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto ON, M5H 3S8

Attention: Josée Turcotte, Secretary

Dear Ms. Turcotte:

RE: OSC Notice and Request for Comment – Proposed OSC Policy 15-601 – Whistleblower Program

AGF Management Limited (“**AGF**”) is writing to provide comments in respect of the Ontario Securities Commission’s (“**OSC**”) proposed whistleblower program as specified in OSC Policy 15-601 (the “**Policy**”).

AGF provides asset management services globally to institutions and individuals through its regulated registered subsidiary firms. AGF's products include a diversified family of mutual funds, mutual fund wrap programs and pooled funds. AGF also manages assets on behalf of institutional investors including pension plans, foundations and endowments as well as for private clients. AGF is listed on the Toronto Stock Exchange.

AGF appreciates that employees may, especially if an internal compliance and reporting program is not in place, need a third-party reporting program that has formalized protections (such as anti-retaliation by employers) and compensation as a result of some of the unintended consequences that come from whistleblowing. For this reason, AGF supports the OSC’s initiative to implement a formalized whistleblower program.

AGF recognizes the OSC’s revisions to the Policy to try to mitigate concerns that the Policy could undermine internal compliance and reporting systems by incentivizing an employee to report to the OSC instead of through their employer’s internal compliance and reporting systems. Considering the importance of first reporting internally, AGF has provided some suggestions in this comment letter that would allow the OSC to further encourage such conduct.

Robust internal reporting systems and importance of internal reporting

Audit committees of reporting issuers that are subject to NI 52-110 *Audit Committees* are required to establish procedures for confidential and anonymous internal reporting by employees regarding accounting, internal accounting controls, or auditing matters. As a result, reporting issuers that are subject to NI 52-110 have an internal compliance and reporting system in place.

Some reporting issuers, such as AGF, have expanded their formalized anonymous internal reporting system to encourage reporting on any subject-matter (not just accounting and audit related). To ensure that the information is kept confidential and that the identity of the whistleblower remains anonymous during the reporting stage, AGF has engaged a third-party service provider to oversee the functionality of the reporting system and the intake process.

Similar to other reporting issuers, AGF relies on this robust internal compliance and reporting system to create an environment where employees feel comfortable in identifying and internally reporting any issues of concern. An internal compliance and reporting system allows issuers to investigate the concern, attempt to remediate it, and report to regulators, as and when necessary. This process is efficient, promotes investor protection, and is beneficial to the markets as it mitigates the number of frivolous or unsubstantiated claims that the regulators receive and are required to investigate.

For this reason, AGF is asking the OSC to consider the below in order to further emphasize the need to first report internally, unless there are “extenuating circumstances” preventing a whistleblower from doing so.

Clarification of “extenuating circumstances”

AGF understands that the OSC is encouraging whistleblowers who are employees to first report through their employers’ internal compliance and reporting system. However, the Policy does not require whistleblowers to do so, recognizing that there may be “**extenuating circumstances**” for the whistleblower that might otherwise impede his or her reporting to an internal compliance and reporting system.

AGF is requesting that the OSC provide clarity regarding “extenuating circumstances”, which may be by way of examples or factors that would be considered when assessing whether there were “extenuating circumstances” that resulted in the employee not first reporting internally.

Factors considered for awards

Based on the revisions to the Policy, AGF understands that one factor that may *increase* the whistleblower's award is whether an employee reported internally first, **or at the same time as**, reporting to the OSC. The inclusion of "or at the same time as" does not encourage employees to first report through their employers' internal reporting system. By allowing an employee to report to his or her employer at the same time as he or she reports to the OSC negates the benefits of first reporting internally as both organizations will simultaneously be relying on their resources to conduct the same investigation.

Further, AGF notes that whether an employee failed to first report internally is not considered as a factor that may *decrease* a whistleblower's award. For example, if an employee fails to report internally and there are no "extenuating circumstances", will the OSC consider the failure to report internally as a factor that may decrease the whistleblower's award? Further, will the OSC consider whether an employer had a robust internal compliance and reporting system in place to facilitate first reporting internally? AGF is requesting that the OSC consider the feasibility of first reporting internally as a factor when assessing whether to decrease a whistleblower's award. This will further incentivize employees to first report through the internal compliance and reporting systems put in place by their employers.

We thank you for the opportunity to raise the above issues with you. We look forward to continued constructive dialogue with respect to the OSC's proposed whistleblower program.

Yours very truly,



Mark Adams
Senior Vice President, General Counsel & Corporate Secretary
AGF Management Limited