The Ontario Securities Commission

National Instrument 81-107
Independent Review Committee for Investment Funds

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The Ontario Securities Commission
Cadillac Fairview Tower
Suite 1903, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

416-593-8314 or Toll Free 1-877-785-1555

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Carswell
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

416-609-3800 or 1-800-387-5164

Contact Centre - Inquiries, Complaints:	Fax: 416-593-8122
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CARSWELL

One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

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NOTICE OF NATIONAL INSTRUMENT 81-107

INDEPENDENT REVIEW COMMITTEE FOR INVESTMENT FUNDS

CSA Notice of Rule, Commentary and Related Amendments

Introduction

We, the members of the Canadian Securities Administrators (the CSA or we), have developed an independent oversight regime for all publicly offered investment funds[1] that is intended to improve investment fund governance. This regime is set out in National Instrument 81-107 *Independent Review Committee for Investment Funds* (the Rule).

Investment Fund Governance in Canada

The Canadian investment fund industry is a key segment of the financial services marketplace. With over $630 billion in assets under management, a sizable amount of public money and, by extension, public trust, is invested in the fund industry. Investors expect high standards of conduct from the stewards of their money. Yet, the conflicts of interest faced by fund managers may present a real challenge to their ability to meet their fiduciary duty to their funds and investors. There is currently no one whose sole responsibility it is to look out for the interests of investors. This has led us to consider the need to improve the governance of investment funds.

The International Organization of Securities Commissions (IOSCO)[2] recently defined investment fund governance to be a framework for the organization and operation of investment funds that seeks to ensure that investment funds are organized and operated in the interests of fund investors, and not in the interests of fund insiders.

For over 30 years, much of the literature written on investment funds and fund governance[3] has concluded that the structure of the fund industry – where the investor's "ownership" of the fund is separate from the fund manager's management and control of the fund – creates the potential for the interests of fund investors to diverge from the pecuniary interests of the fund manager. This could cause a fund manager to act contrary to its fiduciary duty to the investment fund (and ultimately, investors).

In Canada the potential for the interests of investors to diverge from the interests of the fund manager is exacerbated by the fact that often related parties carry out all of the requisite services provided to the

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1 This includes mutual funds, commodity pools, scholarship plans, labour-sponsored or venture capital funds, and closed-end funds and mutual funds that are listed and posted for trading on a stock exchange or quoted on an over-the-counter market.

2 *Examination of Governance for Collective Investment Schemes – Consultation Report* prepared by the Technical Committee of IOSCO, February 2005.

3 See, for example, the *Report of the Canadian Committee on Mutual Funds and Investment Contracts – Provincial and Federal Study*, 1969, Queen's Printer, 1969 prepared by Jim Baillie*; Regulatory Strategies for the Mid-90s: Recommendations for Regulating Investment Funds in Canada,* prepared by Glorianne Stromberg for the CSA, January 1995; *Making it Mutual: Aligning the Interests of Investors and Managers: Recommendations for a Mutual Fund Governance Regime in Canada,* prepared by Stephen Erlichman for the CSA, June, 2000; *Conflicts of Interest of CIS Operators* prepared by the Technical Committee of IOSCO, May 2000; *Examination of Governance for Collective Investment Schemes – Consultation Report* prepared by the Technical Committee of IOSCO, February 2005.

investment fund, without any review of the terms or the manner in which these obligations are being carried out by unrelated persons. Coupled with this is the fact that investors are far removed from the fund manager and the decisions made by the manager or its agents. Investors rarely have the resources, the tools, or the inclination to effectively oversee the fund manager of their investment fund.

The Canadian regulatory regime for conflicts of interest currently relies on the fiduciary obligations of the fund manager set out in certain provincial securities legislation, and the prohibition of certain relationships or transactions. Although regulators have broad discretion to grant relief from those prohibitions, this discretion is generally exercised in narrow circumstances, and it has proven difficult for regulators to always provide timely relief. We recognize that our prohibition-based approach is too restrictive on the one hand, because it prohibits transactions that we acknowledge may be innocuous or even beneficial to investors, and not inclusive enough on the other, because it only deals with certain specific related-party transactions.

The Rule imposes a minimum, consistent standard of independent oversight for all publicly offered investment funds in each of the jurisdictions represented by the CSA.

We believe the Rule strikes the right balance between protecting investors and fostering fair and efficient capital markets. We also believe the Rule keeps pace with global standards, which we consider essential to the continued success of the Canadian investment fund industry. The CSA expect that fund governance will evolve with time, and we anticipate that the governance framework set out in the Rule will provide a flexible platform for future regulatory reform. We are committed to reviewing the impact of the Rule following its implementation.

Consequential Amendments and Adoption of the Rule

We are also publishing a companion policy to the Rule, which we call Commentary. We refer to the Rule and Commentary, together, as the Instrument.

Concurrently with the Instrument, we are publishing related consequential amendments to the following Instruments:

- National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, Form 81-101F1 *Contents of Simplified Prospectus,* and Form 81-101F2 *Contents of Annual Information Form*;
- National Instrument 81-102 *Mutual Funds* (NI 81-102) and Companion Policy 81-102CP *Mutual Funds*;
- National Instrument 81-106 *Investment Fund Continuous Disclosure* and Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance*;
- National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*;
- National Instrument 81-104 *Commodity Pools*; and
- in some jurisdictions, certain local amendments.

The Rule has been adopted or is expected to be adopted as a rule in each of British Columbia, Alberta, Manitoba, Newfoundland and Labrador, Nova Scotia, Ontario and New Brunswick, as a commission regulation in Saskatchewan, as a regulation in Québec, and as a policy in the remaining jurisdictions represented by the CSA. The Commentary contained in the Rule will be adopted as a policy in each of the jurisdictions represented by the CSA.

In Ontario, the Instrument, consequential amendments and other required materials were delivered to the Minister of Government Services on July 28, 2006. The Minister may approve or reject the Instrument or return it for further consideration. If the Minister approves the Instrument or does not take any further action, the Instrument and consequential amendments will come into force on November 1, 2006.

In Québec, the Instrument is a regulation made under section 331.1 of *The Securities Act* (Québec) and must be approved, with or without amendment, by the Minister of Finance. The Instrument will come into force on the date of its publication in the *Gazette officielle du* Québec or on any later date specified in the regulation. It is also published in the Bulletin of the Autorité des marchés financiers.

In British Columbia, the implementation of the Instrument and consequential amendments are subject to ministerial approval. British Columbia also plans to adopt a local instrument that exempts from the Instrument and consequential amendments an investment fund that is a reporting issuer only in British Columbia. You can read more about this exemption in the notice that British Columbia has published about the Instrument.

Provided all necessary approvals are obtained, we expect the Rule and consequential amendments to come into force on November 1, 2006.

Compliance with the Rule may take place over a one year transition period. The Rule also specifies that existing conflict of interest waivers and exemptions that deal with any matter that the Instrument regulates may not be relied on after one year following the coming into force of the Instrument.

Summary and Purpose

Purpose of the Rule

Currently, there is no requirement for investment fund managers or investment funds to have any type of independent oversight of how they manage or monitor conflicts of interest. In compliance with the governance principles recently articulated by IOSCO[4], the Rule provides for the independent review and oversight of the conflicts faced by the fund manager in the operation of the investment fund.

We expect the Rule to enhance investor protection by ensuring that the interests of the investment fund (and ultimately, investors) are at the forefront when a fund manager is faced with a conflict of interest. The Rule will also improve the transparency surrounding a fund manager's fiduciary obligation and decision-making process in such situations, by requiring an upfront check on how the conflict of interest is resolved. This process does not mean, nor do we intend it to result in, the second-guessing of the investment or business decisions of the fund manager. However, it does mean that, for the first time, the

4 *Examination of Governance for Collective Investment Schemes – Consultation Report* prepared by the Technical Committee of IOSCO, February 2005.

fund manager must formally account for each decision involving a conflict of interest to an independent body considering the decision solely from the perspective of the best interests of the investment fund and its investors.

We also expect the Rule to contribute to more efficient Canadian capital markets by permitting fund managers to engage in certain related-party and self-dealing transactions without prior regulatory approval[5]. This will give fund managers greater flexibility to make timely investment decisions to take advantage of market opportunities they believe are in the best interests of the investment fund and investors.

The CSA believe managers of all investment funds, large and small, face conflicts of interest and will benefit from the independent perspective brought to bear by an independent body on such matters. We believe the costs associated with the Rule, published with the 2004 Proposal and the 2005 Proposal, will be proportionate to the benefit. We are further satisfied that the limited scope of the independent body's mandate will in turn limit its corresponding fiduciary duty and duty of care.

Summary of the Rule

The Rule requires every investment fund that is a reporting issuer to have a fully independent body, the Independent Review Committee (IRC), whose role is to oversee all decisions involving an actual or perceived conflict of interest faced by the fund manager in the operation of the fund.

The Rule captures two types of conflicts: (i) 'business' or 'operational' conflicts - those relating to the operation by the manager of its funds that are not specifically regulated under securities legislation, except through the general duties of loyalty and care imposed on the fund manager; and (ii) 'structural' conflicts – those conflicts resulting from proposed transactions by the manager with related entities of the manager, fund or portfolio manager currently prohibited or restricted by securities legislation.

The Rule requires that prior to making a decision involving a conflict of interest matter, the fund manager must establish written policies and procedures that it must follow and refer the matter to the IRC for its review.

A decision by the fund manager to engage in certain transactions giving rise to 'structural' conflicts currently prohibited or restricted by securities legislation, must be approved by the IRC before the transaction may proceed. The approval may be on a case-by-case basis, or in the form of a standing instruction. For any other proposed course of action that involves a conflict of interest for the fund manager, the IRC must provide the fund manager with a recommendation, which the fund manager must consider before proceeding.

The Rule also requires the IRC to approve certain changes to a mutual fund before the manager may proceed with the change. In the consequential amendments to NI 81-102 which accompany the Instrument, we specify that the IRC must approve a change in the auditor of the mutual fund, and a reorganization or transfer of assets of the mutual fund to a mutual fund managed by the same fund

[5] These transaction are inter-fund trades, purchases by a mutual fund of the securities of related issuers and purchases of securities by mutual funds during the distribution period and the 60 day period thereafter where the offering is being underwritten by a related party.

manager or an affiliate. We have eliminated the requirement for securityholder approval in these instances but continue to require a securityholder vote in other circumstances.

Background

In 1999, the CSA retained Stephen Erlichman to provide a summary of the discussion on governance in Canada and abroad and to make specific recommendations to improve fund governance. We released his report entitled *Making it Mutual: Aligning the Interests of Investors and Managers: Recommendations for a Mutual Fund Governance Regime in Canada* in June, 2000[6].

On March 1, 2002, the CSA released Concept Proposal 81-402 *Striking a New Balance: A Framework for Regulating Mutual Funds and their Managers* (the Concept Proposal) setting out our vision for a renewed framework for regulating mutual funds and their managers that rested on five pillars: registration of mutual fund managers, mutual fund governance, product regulation, disclosure and investor rights and regulatory presence. The Concept Proposal proposed a very robust system of fund governance, with a 'board'-like body that would oversee all of the fund manager's activities.

On January 9, 2004, we published for comment the first version of the Rule and Commentary (the 2004 Proposal). In response to strong industry feedback to limit the role of the governance body, the 2004 Proposal narrowed the focus of the governance body (now called the IRC) to oversight of the potential conflicts of interest that exist for fund managers in the operation of their funds. The focus on conflicts of interest was deliberate. In our view, this was an area where independent review mattered most, and would not impose an undue burden on mutual fund managers who have no experience working with an independent advisory body.

For additional background information on the Concept Proposal and the 2004 Proposal, please refer to the notices published with those documents on the websites of members of the Canadian Securities Administrators.

As a result of the comments we received from stakeholders (in particular investors and investor advocates who urged us to give the IRC more "teeth"), as well as our own experience to date with the exemptive relief that we have granted from the conflict prohibitions and restrictions in securities legislation, the CSA made a number of significant changes to the 2004 Proposal to provide for a greater level of investor protection. On May 27, 2005, we published the Rule and Commentary for comment a second time (the 2005 Proposal). The comment period expired on August 25, 2005.

The 2005 Proposal introduced a number of key changes. Among them: the scope of the Rule was expanded to include all publicly offered investment funds; instead of repealing the existing conflict prohibitions and restrictions in securities legislation, the Rule codified exemptions for certain transactions giving rise to 'structural' conflicts currently prohibited or restricted by securities legislation; the Rule introduced a number of tools for the IRC to use if it determines the fund manager has placed its interests ahead of the interests of the fund in conflict of interest matters; and the Rule specified the key governance practices we expected of the IRC and the fund manager.

[6] *Making it Mutual: Aligning the Interests of Investors and Managers: Recommendations for a Mutual Fund Governance Regime in Canada,* prepared by Stephen Erlichman for the CSA, June, 2000.

In response to concerns previously raised about the potential unlimited liability of IRC members, we sought advice from external legal counsel. Based on this advice, we revised the Rule to clarify the very specific functions, duties and obligations of the IRC which, we were advised, should correspondingly limit the IRC's fiduciary duty and duty of care. We published this analysis with the 2005 Proposal on the website of the Ontario Securities Commission and the website of the Autorité des marchés financiers.

The Rule continues to reflect the key changes made in the 2005 Proposal.

Throughout this initiative, we heard divergent views from stakeholders on almost every aspect of our proposals. We believe the Rule strikes the right balance between these competing points of view.

While we remain confident that the five-pillared framework for mutual fund regulation we outlined in the Concept Proposal is a sound blueprint for change, we also understand that we cannot bring all five pillars into place overnight. The CSA remain committed to the pillars of fund regulation, some of which are already in place while others are being addressed in separate policy initiatives currently underway.

Summary of Changes to the Instrument

After considering all of the comments received, we have revised the Instrument. However, as these changes are not material, we are not republishing the Instrument for a further comment period. Many of the changes we have made respond to stakeholder comments on practical matters related to the implementation and ongoing operation of the IRC.

See Appendix A for a description of the noteworthy changes we have made to the 2005 Proposal.

The independent legal analysis we published with the 2005 Proposal concerning the liability of IRC members has also been updated to reflect the drafting changes made to the Instrument. It is available on the website of the Ontario Securities Commission and the website of the Autorité des marchés financiers.

Summary of Written Comments Received on the 2005 Proposal

We received 36 submissions on the 2005 Proposal. We have considered all comments received and wish to thank all those who took the time to comment. Copies of the comment letters have been posted on the Ontario Securities Commission website at www.osc.gov.on.ca. Copies are also available from any CSA member. The names of the commenters can be found in Appendix B to this Notice.

A summary of the comments we received on the 2005 Proposal, together with our responses, is also in Appendix B to this Notice.

Related Amendments

National Amendments

Amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101), Form 81-101F1 *Contents of Simplified Prospectus,* and Form 81-101F2 *Contents of Annual Information Form* are set out in Appendix C;

Amendments to National Instrument 81-102 *Mutual Funds* (NI 81-102) and Companion Policy 81-102CP *Mutual Funds* are set out in Appendix D;

Amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) and Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* are set out in Appendix E;

Amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* (NI 13-101) are set out in Appendix F; and

Amendments to National Instrument 81-104 *Commodity Pools* (NI 81-104) are set out in Appendix G.

Local Amendments

We have amended elements of local securities legislation, in conjunction with the implementation of the Instrument. The provincial and territorial securities regulatory authorities may publish these proposed local changes separately in their jurisdictions.

Consequential amendments to rules or regulations in a particular jurisdiction, if applicable, are in Appendix H to this Notice published in that particular jurisdiction.

Some jurisdictions will need to implement the Instrument using a local implementing rule. Jurisdictions that must do so will separately publish the implementing rule.

Questions

Please refer your questions to any of:

Rhonda Goldberg
Assistant Manager, Investment Funds
Ontario Securities Commission
Tel: (416) 593-3682
rgoldberg@osc.gov.on.ca

Susan Silma
Director, Investment Funds
Ontario Securities Commission
Tel: (416) 593-2302
ssilma@osc.gov.on.ca

Susan Thomas
Legal Counsel, Investment Funds
Ontario Securities Commission
Tel: (416) 593-8076
sthomas@osc.gov.on.ca

Doug Welsh
Legal Counsel, Investment Funds
Ontario Securities Commission
Tel: (416) 593-8068
dwelsh@osc.gov.on.ca

Noreen Bent
Manager and Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission
Tel: (604) 899-6741
nbent@bcsc.bc.ca

Christopher Birchall
Senior Securities Analyst, Corporate Finance
British Columbia Securities Commission
Tel: (604) 899-6722
cbirchall@bcsc.bc.ca

Bob Bouchard
Director, Corporate Finance and Chief Administrative Officer
Manitoba Securities Commission
Tel: (204) 945-2555
bbouchard@gov.mb.ca

Cynthia Martens
Legal Counsel
Alberta Securities Commission
Tel: (403) 297-4417
cynthia.martens@seccom.ab.ca

Pierre Martin
Senior Legal Counsel, Direction des marchés des capitaux
Autorité des marchés financiers
(514) 395-0558, ext. 4375
pierre.martin@lautorite.qc.ca

Julie Hamel
Analyst, Direction des marchés des capitaux
Autorité des marchés financiers
Tel: (514) 395-0558, ext. 4476
julie.hamel@lautorite.qc.ca

APPENDIX A

SUMMARY OF CHANGES

The Instrument

Part 1 Definitions and Application

1.2 “conflict of interest matter”

- For greater certainty, we amended the definition to specifically list – in new Appendix A to the Rule – the provisions in securities legislation that could restrict or prohibit an investment fund, manager or an entity related to the manager from proceeding with a proposed action.
- We added Commentary to articulate our view that the reasonable person test encompassed in paragraph (a) of the definition does not capture inconsequential matters. We also added Commentary setting out our expectations of how a manager could assess conflict of interest matters.
- We added Commentary to clarify our view that, in connection with portfolio managers or advisers, paragraph (a) of the definition only captures those conflicts of interest faced by the portfolio manager that relate to its decisions made on behalf of the investment fund that may affect the manager’s ability to make decisions in the best interests of the fund. We also added examples of the types of portfolio manager conflicts that paragraph (a) may capture.
- We added Commentary to clarify our view that paragraph (a) of the definition is not intended to capture conflicts of interest at the service provider level generally.

1.3 “entity related to the manager”

- We amended a portion of the definition to capture any person or company that can ‘materially affect’ the direction of the management and policies of the manager or the investment fund.
- We moved the reference to “ownership of voting securities” in paragraph (a) of the definition to the Commentary.
- We deleted reference to “agent” in paragraph (b) of the definition because we are satisfied that paragraph (a) captures the entities we intended. For greater clarity, we added Commentary to provide examples of entities captured under paragraph (a) of the definition, including third party portfolio managers.

1.4 “independent”

- We amended paragraph 3 of the Commentary to further clarify our views regarding the types of individuals who may or may not meet the definition.

1.5 "inter-fund self-dealing investment prohibitions"

- For greater certainty, we amended the definition to specifically list – in new Appendix B to the Rule – the provisions in securities legislation that prohibit a portfolio manager or an investment fund from purchasing or selling securities of an issuer from or to the account of a responsible person.

1.6 "manager"

- To avoid confusion, we deleted from the Commentary the statement that there may be circumstances where more than one person or company is designated the manager. We also added examples in the Commentary of the types of managers the definition may capture.

- We added Commentary to articulate that we may examine an investment fund if it seems that it was structured to avoid the operation of this Instrument.

1.7 "standing instruction"

- We added a definition of standing instruction.

Part 2 Functions of the manager

2.1 Manager standard of care

- For greater certainty, we amended the section to better reflect the standard of care for managers in securities legislation.

2.2 Manager to have written policies and procedures

- We amended paragraph (1)(a) to add that in establishing its policies and procedures, the manager must have regard to its duties under securities legislation.

- We added a new subsection (2) that requires the manager, in establishing its policies and procedures under this part, to consider the input of the IRC, if any.

- We amended subsection (3) (previously subsection (2)) to specify that the manager must provide the IRC with a written description of any significant changes to its policies and procedures for IRC input before implementing the revised policies and procedures.

- We amended paragraph 1 of the Commentary to clarify that we expect the manager under this part to identify the conflict of interest matters it expects will arise and that will be referred to the IRC. We further amended paragraph 1 of the Commentary to clarify that this part requires the manager to establish policies and procedures for any other matters required by securities legislation to be referred to the IRC.

- We amended paragraph 2 of the Commentary to clarify that paragraph (1)(a) is intended to reinforce the manager's obligation to make decisions in the best interests of the fund when establishing the fund's policies and procedures.

- We amended paragraph 2 of the Commentary to clarify our expectation that written policies and procedures be designed to prevent, detect and correct violations of securities legislation in the areas addressed by the Rule .

- We added a new paragraph 3 to the Commentary to articulate our expectation that the manager inform the IRC whether its proposed action adheres to its written policies and procedures when referring a matter to the IRC. We further specified in the Commentary our expectation that if an unanticipated conflict of interest matter arises for which the manager does not have a policy and procedure, we expect the manager to bring the matter and its proposed action to the IRC for its review and input at the time the matter is referred to the IRC.

2.3 Manager to maintain records

- We amended paragraph 1 of the Commentary to clarify our expectation that managers will keep their records in accordance with existing best practices.

- We added a new paragraph 2 to the Commentary to clarify our expectation that a manager is required to keep minutes only of any material discussions it has with the IRC or internally on matters subject to IRC review. We further specified in the Commentary that the manager and the IRC may share the record keeping and maintenance of records functions.

2.4 Manager to provide assistance

- We amended subsection (1) to clarify that this provision also applies when a manager refers its policies and procedures to the IRC.

Part 3 Independent review committee

3.1 Independent review committee for an investment fund

- For greater clarity, we amended the Rule to say an investment fund must have an IRC.

- We amended paragraph 2 of the Commentary to expand upon our view that the Rule does not prevent sharing of an IRC, nor a third party from establishing an IRC or IRCs for investment funds.

3.3 Vacancies and reappointments

- We created a new section in the Rule, separating out the provisions regarding IRC vacancies from the provisions regarding the term of office for IRC members.

- We added a new subsection (3) that requires the IRC to consider the manager's recommendations, if any, in filling a vacancy on the IRC.

- We added a new subsection (4) mandating that an IRC member's total years of service on an investment fund's IRC must not be more than 6 years, unless the manager and the IRC agree. We also added to the Commentary to explain our view that a maximum term limit is intended to enhance the independence and effectiveness of the IRC.

3.4 Term of Office

- We amended the term of office provision. We now specify that an IRC member's term must be not less than 1 year and not more than 3 years.

3.6 Written charter

- We amended paragraph 1 of the Commentary to clarify our view that an IRC acting for more than one fund possesses flexibility regarding the adoption of written charters.

- We added to paragraph 3 of the Commentary our expectation that the written charter's policies and procedures would include a policy relating to an IRC member's ownership of securities of the investment fund, manager or in any person or company that provides services to the investment fund or the manager.

- We further added to paragraph 3 of the Commentary our expectation that the written charter's policies and procedures would describe how any subcommittee of the IRC delegated with any of the functions of the IRC is to report to the IRC.

- For greater clarity, we added a new paragraph 4 to the Commentary which states that the Rule does not preclude the IRC and manager from agreeing that the IRC will perform functions in addition to those prescribed, however, the Rule does not regulate any such additional functions.

3.7 Composition

- We added to paragraph 1 of the Commentary our expectation that the manager will seek the input of the IRC prior to changing the size of the IRC.

- We amended paragraph 2 of the Commentary to further clarify our expectations of the role of the IRC Chair.

3.8 Compensation

- We created a new section in the Rule to exclusively address IRC compensation.

- We added subsection (1) to specify that the manager may set the initial compensation and expenses of the first IRC, or any subsequent IRC appointed by the manager under subsection 3.3(5).

- We further added provisions to require the IRC, in setting its members' reasonable compensation and expenses after their initial appointment by the manager, to consider its most recent assessment of its compensation and the manager's recommendations, if any.

- New Commentary was added to correspond with these changes.

3.9 Standard of care

- For consistency, we amended the section to reflect the changes made to section 2.1.

3.10 Ceasing to be a member

- For greater clarity, we rearranged the ordering of subsections (1) and (2).

- We amended subsection (3) by adding paragraphs (d), (e), and (f) which provide that an individual ceases to be a member of the IRC if they are prohibited from acting as a director or officer in Canada, if they are subject to any penalties or sanctions made by a court relating to provincial or territorial securities legislation, or if they are a party to a settlement agreement with a securities regulatory authority in Canada.

- Subsection (4) was amended to correspond to the changes made to subsections (1) and (2).

- We added a new subsection (7) to provide an IRC member who receives notice of a meeting of securityholders called to consider his or her removal, the right to provide the manager with a written statement giving reasons for opposing the removal and to require the manager to send a copy of the statement to securityholders.

- We added a new paragraph 1 to the Commentary to articulate our expectation that the removal of an IRC member by a meeting of securityholders called by the manager will not be routine.

3.11 Authority

- We moved the provisions previously contained in this section that dealt with IRC compensation into new section 3.8.

- We added a new paragraph (d) to subsection (1) and a new subsection (2) to reflect our view that an IRC should have the ability to delegate to subcommittees any of its functions, provided the subcommittees report to the IRC at least annually.

- We amended paragraph 1 of the Commentary to clarify our expectation that an IRC will use independent advisors selectively and only to assist, not replace, IRC decision-making. We also amended this paragraph to clarify our view that we expect the IRC's use of external counsel and other advisers will not be routine.

- We added a new paragraph 2 to the Commentary to articulate our expectations regarding the IRC's use of subcommittees, including that the IRC's delegation to a subcommittee does not absolve the IRC from its responsibility for that function.

- We amended paragraph 3 of the Commentary to clarify our view that the IRC has no obligation to report matters to the securities regulatory authority or regulator other than as prescribed in the Rule and under securities legislation.

- We added a new paragraph 4 to the Commentary to clarify our view that the Rule does not prohibit a manager from communicating with securities regulatory authorities or regulators with respect to any matter.

3.12 Decisions

- We created a new section in the Rule to require that any IRC decisions must have the agreement of a majority of its members. This was previously discussed in the Commentary under section 5.1. This new section also sets out what decisions an IRC may make if it has vacancies and therefore has only one or two members.

3.13 Fees and expenses to be paid by the investment fund

- We amended this section by deleting previous paragraphs (a), (b), and (c) and replacing them with a general requirement for the investment fund to pay from its assets all reasonable costs reasonably incurred in complying with the Rule.

- We amended paragraph 1 of the Commentary to articulate our expectation that a manager will allocate the costs associated with the IRC on an equitable and reasonable basis amongst the investment funds for which the IRC acts.

- We added a new paragraph 2 to the Commentary to clarify our expectation about what costs may appropriately be charged to the investment fund.

3.14 Indemnification and insurance

- We added a new subsection (1) to define "member" for the purposes of this section.

- We deleted the previous subsections (4) and (7) regarding the provision of indemnities with the approval of or upon application to a court.

- We amended paragraph 2 of the Commentary to further clarify our expectations regarding the application of this section.

Part 4 Functions of independent review committee

4.1 Review of matters referred by manager

- We amended subsection (2) by deleting paragraph (b) to clarify that the IRC is only obligated under the Rule to perform functions required by securities legislation (including the Rule). Any additional functions that the IRC undertakes are not regulated under the Rule.

- We amended subsection (3) to provide the IRC with the discretion to choose whether it wishes to deliberate and decide on a matter in the absence of the manager, any representative of the manager and any entity related to the manager.

- We added a new subsection (4) that provides that, despite having discretion to exclude the manager under subsection (3), the IRC must hold at least one meeting annually without the manager, any representative of the manager and any entity related to the manager in attendance.

- For greater clarity, we amended paragraph 2 of the Commentary to further clarify that the Rule does not preclude the IRC and manager from agreeing that the IRC will perform other functions in addition to those prescribed, however, the Rule does not regulate any such additional functions that the IRC may undertake in addition to those prescribed by the Rule.

- We amended paragraph 4 of the Commentary to clarify our view that the IRC's obligation to hold at least one meeting annually without anyone else present is satisfied if the IRC holds a portion of any meeting annually without the manager, any representative of the manager or any entity related to the manager in attendance.

4.2 Regular assessments

- We added a new paragraph (d) to subsection (1) to require that the IRC review and assess at least annually the adequacy and effectiveness of any subcommittee delegated by the IRC to perform any of its functions.

- We added a new subsection (2) that requires the IRC at least annually to review and assess the independence of each of its members and the compensation of each of its members.

- We amended paragraph 3 of the Commentary to clarify our expectation that the manager may provide IRC members with feedback that the IRC may consider as part of its self-assessment.

4.3 Reporting to the manager

- We replaced the word "suspects" in paragraphs (a) and (b) with "has reason to believe has occurred".

4.4 Reporting to securityholders

- We amended subsection (1) to set out additional items required to be included in the IRC's report to securityholders, such as: the basis for the determination that a member is independent if there is a reason to question the member's independence, the name of any other fund family on whose IRC the member serves, the percentage of securities a member holds in the fund or the manager, any indemnities paid to IRC members, the criteria used by the IRC to determine the appropriate level of its compensation, and a brief summary of any recommendations and approvals (not limited to standing instructions) the manager relied upon during the period.

4.5 Reporting to securities regulatory authorities

- We added a new paragraph 2 to the Commentary to clarify our expectation that an IRC will include in any notification under this section what steps the manager proposes to take, or has taken, to remedy the breach, if known.

- We added a new paragraph 3 to the Commentary to articulate our view that this notification mechanism is not intended to be used to resolve disputes or to raise inconsequential matters.

4.6 Independent review committee to maintain records

- We added a new paragraph (e) to specify that the IRC is required to maintain records of the decisions it makes.

- We added a new paragraph 2 to the Commentary to clarify our expectation that an IRC is required to keep minutes only of any material discussions it has with the manager or internally on matters subject to its review. We further specified in the Commentary that the IRC and the manager may share the record keeping and maintenance of records functions.

Part 5 Conflict of interest matters

5.1 Manager to refer conflict of interest matters to independent review committee

- We added a new subsection (2) to require that a manager provide a summary of the IRC's decision in the notice of meeting to securityholders, if the matter requires the prior approval of securityholders. This was previously discussed in the Commentary to this section.

- We amended paragraph 1 of the Commentary to clarify our expectations that it is not the role of the IRC to second-guess the investment or business decisions of the manager or an entity related to the manager.

- We added a new paragraph 3 to the Commentary to clarify our expectation that when a conflict of interest matter arises for which the manager does not have an existing policy, the manager will bring the matter and its proposed action to the IRC for its review and input at the time the manager refers the matter to the IRC.

- We deleted the discussion previously contained in paragraph 2 of the Commentary. The Rule now sets out in section 3.12 the IRC composition needed to make decisions.

5.2 Matters requiring independent review committee approval

- We amended paragraph 1 of the Commentary to clarify that if the IRC has not provided a standing instruction, the manager must seek approval in each instance for a matter under subsection (1).

- We also added to the Commentary that an IRC may consider as guidance any conditions imposed in prior exemptive relief orders when contemplating the appropriate terms and conditions of its approval.

5.3 Matters subject to independent review committee recommendation

- We added to subsection (2) a requirement that the manager must notify the IRC in writing prior to proceeding with a proposed action which the IRC considers does not achieve a fair and reasonable result for the investment fund.

- We deleted former subsection (5) that required the manager to pay the costs associated with filing the notification to securityholders.

- We amended paragraph 1 of the Commentary to clarify our expectation that among the factors the manager will look to for guidance in identifying conflict of interest matters under this section will be industry best practices.

5.4 Standing instructions by the independent review committee

- We deleted the prior subsection (1). It was no longer necessary now that we have defined "standing instruction" in section 1.7.

- For greater clarity, we amended previous paragraph (3)(b) (now paragraph (2)(b)) to better reflect each of the steps we expect the IRC to conduct as part of its annual review of any standing instructions.

- We added a new subsection (3) to provide that the manager may continue to rely upon a standing instruction until the IRC notifies it that the standing instruction has been amended or is no longer in effect.

Part 6 Exempted Transactions

6.1 Inter-fund trades

- We moved up the definitions in this section to subsection (1).

- For greater clarity, we added a new subsection (5) to provide an exemption from the dealer registration requirement, to reflect our expectation that inter-fund trades made in accordance with this section are not required to be made through a dealer. This exemption is necessary only in Ontario and Newfoundland and Labrador. Other jurisdictions can rely on the exemption in NI 45-106. New Commentary was added as new paragraph 3 to correspond with this change.

- For ease of reference, we added a new subsection (6) to specify that "dealer registration requirement" has the meaning ascribed to that term under National Instrument 14-101 *Definitions*.

- We also added to the Commentary as new paragraph 4 that this section sets out only the minimum conditions for inter-fund trades to proceed without regulatory exemptive relief, and that an IRC may consider as guidance any conditions imposed in prior exemptive relief orders when contemplating the appropriate terms and conditions of its approval.

6.2 Transactions in securities of related issuers

- For ease of reference, we added a new subsection (3) to specify that "mutual fund conflict of interest investment restrictions" has the meaning ascribed to that term under National Instrument 81-102 *Mutual Funds*. This was previously contained in the Commentary.

- We added a new paragraph 4 to the Commentary to clarify our expectation that if the IRC subsequently withdraws its approval for additional purchases under this section, the manager will consider whether continuing to hold such securities previously obtained is a conflict of interest matter under paragraph 1.2(a). We also specified in the Commentary our view that the ongoing holding of securities bought in accordance with this section is not subject to paragraph 1.2(b).

Part 7 Exemptions

7.2 Existing exemptions, waivers or approvals

- We amended this section to provide greater clarity that any exemption that deals with the matters that this Rule regulates will expire one year after the Rule comes into force. We also amended the Commentary to state that we consider all exemptions – not just those that deal with matters under subsection 5.2(1) – to expire one year after the Rule comes into force, whether or not they contain a 'sunset' provision.

Part 8 Effective date

8.2 Transition

- We amended subsections (1) and (2) to provide a transition period for all investment funds, whether or not established before the date the Rule comes into force.

- We further amended subsections (1) and (2) by deleting the requirements for the IRC to adopt a written charter within three months from the date the IRC is formed, and to have its policies and procedures in place and begin referrals to the IRC within six months from the date the IRC adopts its written charter. Instead, the Rule now provides for a transition period ending on the earlier of the date the manager informs the securities regulatory authorities or regulator it intends to comply fully with the Rule, or one year after the Rule comes into force. The requirement for the manager to appoint the first members of the IRC six months after the Rule comes into force remains.

- We added a new paragraph 3 to the Commentary to clarify our expectation that investment funds that wish to rely upon the Rule before the one year transition period expires, must be in complete compliance with the Rule.

- We added a new paragraph 4 to the Commentary to clarify our expectation that for investment funds established before the expiry of the transition period, the manager will establish policies and procedures on all ongoing conflict matters and refer such matters to the IRC before the end of the transition period.

- We also added a new paragraph 5 to the Commentary to clarify our view that we do not consider a manager's initial decision-making in the organization of an investment fund to be subject to IRC review, unless the manager's decisions give rise to conflicts of interest concerning the manager's obligations to existing investment funds within the manager's fund family. We also noted in the Commentary that we anticipate the manager will wish to engage the IRC early in the establishment of the investment fund to ensure the IRC is adequately informed of potential new conflicts of interest.

- We added a new paragraph 7 to the Commentary to clarify our expectation that any new disclosure obligations arising out of the Rule will be incorporated as part of the investment fund's annual prospectus renewal or continuous disclosure filing following the expiry of the transition period.

- For greater clarity, we added a new paragraph 8 to the Commentary to articulate our view that section 5.1 of NI 81-102 is not intended to capture the costs associated with a fund's compliance with new regulatory requirements.

Appendix A to the Rule

- For greater clarity, we added a new Appendix A to specifically list the provisions in securities legislation referred to in paragraph 1.2(b) Definition of "conflict of interest matter".

Appendix B to the Rule

- For greater clarity, we added a new Appendix B to specifically list the inter-fund self-dealing conflict of interest provisions in the securities legislation referred to in section 1.5 Definition of "inter-fund self-dealing investment prohibitions".

Appendix A to the Commentary

- We moved the decision tree previously contained in Appendix B to the Notice accompanying the 2005 Proposal into Appendix A to the Commentary.

Consequential Amendments

National Instrument 81-101

Form 81-101F1

- We revised the amendment to Item 5 of Part A of Form 81-101F1 so that it now refers to the diagram or table. We also added to the disclosure the requirement to set out the composition of the IRC.

- We revised the amendment to Item 8 of Part A of Form 81-101F1 to provide for alternative disclosure in the Part B if the information required by subsection 3.1 of Item 8 is not the same for each mutual fund.

- We revised the amendment to Item 4 of Part B of Form 81-101F1 so that it now refers to the diagram or table. We also added to the disclosure the requirement to set out the composition of the IRC.

- We added a new subparagraph (f)(iii) to Item 5 of Part B of Form 81-101F1 that requires disclosure of the amount of fees and expenses payable in connection with the IRC if this information is not contained in the table required by Item 8.1 of Part A.

Form 81-101F2

- We added a new paragraph 10.1(h) to Item 10 of Form 81-101F2 that requires a description of the administration of the oversight of the manager of the mutual fund by the IRC.

- We added a new subsection (6) to Item 11 of Form 81-101F2 that requires disclosure of voting or equity securities held by IRC members in the mutual fund, the manager or in any person or company that provides services to the mutual fund or the manager.

- We revised the amendment to Item 12 of Form 81-101F2 by adding a new instruction (2) that provides that if the fund has an IRC, state in the disclosure that NI 81-107 requires the manager to have policies and procedures relating to conflicts of interest.

- For consistency with current requirements, we revised the amendment to Item 15 of Form 81-101F2 to add paragraphs (a) and (b).

National Instrument 81-102

Definition of "mutual fund conflict of interest investment restrictions"

- We revised the amendment to paragraphs (a), (c), (d) and (e) to ensure consistency with existing securities legislation.

Section 4.1 Prohibited Investments

- We revised the amendment to subsection 4.1(4) of NI 81-102 to provide that only an investment made during the 60 day period following the distribution is required to be made on a stock exchange.

- We revised the amendment to paragraph 4.1(4)(d) to clarify that the requirement to file the particulars of each investment made by the fund under this section is with reference to the fund's most recently completed financial year.

- For greater clarity, we added a new subsection (5) to specifically list – in new Appendix C to NI 81-102 – the provisions of the securities legislation that are also exempted if investments are made in accordance with subsection (4).

Section 4.2 Self Dealing

- We moved the amendment previously contained in this section that dealt with an exemption from the self-dealing prohibition in section 4.2 into section 4.3.

- For consistency, we revised the exemption to reflect the corresponding exemption for inter-fund trading in section 6.1 of NI 81-107.

<u>Part 5 Fundamental Changes</u>

- For greater clarity, we revised the amendment to subsection 5.3(2) of NI 81-102 to specify which provisions of section 5.6 we expect the mutual fund to comply with.

<u>Companion Policy 81-102CP</u>

- We revised the amendment to section 7.7 of the Companion Policy to clarify our expectation that the manager will include a description of the independent review committee's determination in the written notice referred to in subsection 5.4(2) of the Rule.

<u>Appendix C</u>

- We created a new Appendix C – Provisions contained in Securities Legislation for the Purpose of Subsection 4.1(5) – Prohibited Investments to specifically list the provisions of the securities legislation that are also exempted if investments are made in accordance with subsection 4.1(4).

National Instrument 81-106

- We added a new line item requirement to the Statement of Operations in section 3.2 for IRC fees.

National Instrument 13-101

- We revised the amendment to Appendix A of NI 13-101 to conform to SEDAR requirements regarding title names.

National Instrument 81-104

<u>Section 9.2</u>

- For consistency with the disclosure requirements under NI 81-101, we revised the amendment to subsection 9.2(p).

APPENDIX B

SUMMARY OF PUBLIC COMMENTS ON NATIONAL INSTRUMENT 81-107 AND COMMENTARY

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Summary of Comments

Background

On May 27, 2005, the CSA published for comment National Instrument 81-107 *Independent Review Committee for Investment Funds* ("the Instrument" or "the 2005 Proposal"). The comment period expired on August 25, 2005. We received submissions from the 36 commenters listed at the end of this table.

We have considered all comments received and wish to thank all those who took the time to comment.

The questions contained in the CSA Notice to the 2005 Proposal ("the 2005 Notice") and the comments we received in response to them are summarized below. The items and headings below correspond to the items and headings in the 2005 Notice. Below the comments which respond to specific questions in the 2005 Notice, we have summarized the other comments we received on the 2005 Proposal.

1. The Instrument now applies to publicly offered investment funds.

An Expanded Scope

We request comment on the expanded scope of the Proposed Instrument and particularly seek feedback from those industry participants not included in the 2004 Proposal – scholarship plans, labour-sponsored or venture capital funds, and closed-end funds and mutual funds that are listed and posted for trading on a stock exchange or quoted on an over the counter market.

Specifically, we would like to understand what conflicts of interest could exist in the management of these investment funds, the anticipated costs the Instrument could have on these funds, whether there are additional practical considerations for each of these investment funds structures that we should address, and what other mechanisms or approaches the fund

managers of these investment funds use today or could use to address any conflicts of interest.

Comments	*Responses*
General Comments ***Agree*** We received considerable support for broadening the Instrument to encompass all investment funds, including labour-sponsored funds and closed-end funds listed and posted for trading on stock exchanges. Commenters specifically supported the notion that there should be a level playing field among investment funds and they should be subject to the same oversight regimes. One commenter remarked that as alternative products become more popular, parity in regulatory regimes becomes increasingly important, and investors should be entitled to expect that similar products are regulated similarly. ***Disagree*** Some commenters continued to question whether there will be any substantial benefit to investors as a result of the Instrument. Most of these commenters told us that IRCs should only be mandatory for managers who wish to benefit from the relaxation of the conflict of interest prohibitions. ***Exchange Traded Funds*** A manager of a family of exchange-traded funds and closed-end funds noted that the Instrument provides an appropriate regime to address real conflicts and that there is not a principled basis for excluding exchange-traded funds from the application of the Instrument. One stock exchange supported the introduction of a minimum, consistent standard of governance for exchange-traded funds and investment funds as listed issuers.	***Response*** We continue to believe that conflicts of interest exist in the management of all publicly offered investment funds. Accordingly, we have maintained the expanded scope of the Instrument to include exchange traded funds, LSIFs, and scholarship plans.
We were told that if the fund is a listed entity, it will already have independent directors on the board.	We acknowledge that some funds that are listed on the TSX may have some independent directors in place under TSX requirements. We do not believe that these requirements serve as a substitute for the requirements contained in the Instrument. We note, however, that to the extent an exchange traded fund already has directors in place that are independent, it's possible that those directors could also be independent under the Instrument and able to serve on the fund's Independent Review Committee ("IRC"). The Commentary to the definition of independence sets out our view that, depending on the circumstances, independent or former independent members of the board of directors

	of an investment fund may be independent.
Two commenters, remarked that certain types of funds such as split-share corporations or closed-end commodity funds with a single investment should be completely excluded from the Instrument.	We continue to believe that it is appropriate for the Instrument to apply to these entities. These entities may possess business conflicts and often use related brokers. We expect, however, that these entities would possess relatively fewer conflicts resulting in fewer referrals to the IRC.
LSIFs Another commenter specifically welcomed the inclusion of LSIFs in the scope of the Instrument, where conflicts of interest (valuation issues) noted by the commenter have already exhibited themselves.	We agree and have maintained the expanded scope so that the Instrument applies to LSIFs.
One manager of LSIFs told us it is not necessary for LSIFs to have an independent IRC that is separate and distinct from the fund's Board of Directors, since the majority of board members of certain LSIFs have no affiliation with the fund.	We continue to believe that it is important to put in place a consistent governance regime that applies to all funds equally. As discussed above in connection with exchange traded funds, to the extent an LSIF's Board of Directors already possesses independent members, it's possible that such members could also be independent under the Instrument and capable of serving on the LSIF's IRC. The IRC does not necessarily have to be separate and distinct from the fund's Board of Directors so long as it meets the requirements of the Instrument.
Scholarship Plans One sponsor and dealer of certain scholarship plans told us that scholarship plans should be excluded from the application of the Instrument because as 'not-for-profit' entities, scholarship plans do not encounter the conflicts that arise in 'for profit' investment funds. This commenter expressed concern that the Instrument is not sufficiently flexible in recognizing the corporate structures of its scholarship plans. We were told that for scholarship plan dealers, a model which includes a strong, independent board of directors will prove more effective than the model outlined in the Instrument.	Despite being "not –for –profit" entities, we believe it is appropriate for the Instrument to apply to scholarship plans. The managers of these entities may possess conflicts of interest. For instance, the plan managers generally receive compensation and set fees in connection with their management of the plans on behalf of their investors. We have also encountered plans that use advisors that are controlled by plan directors. As discussed above, however, if a scholarship plan possesses independent directors already, some of these directors may also be eligible to serve on the plan's IRC so long as the directors meet the requirements of the Instrument.

Other Types of Funds This commenter suggested that segregated funds and hedge funds should also be included in the Instrument, while another commenter expressed concern that 'similar products' such as pooled funds, are not subject to the Instrument.	We do not possess the legislative authority to regulate segregated funds as they fall under the jurisdiction of the *Insurance Act*. The Joint Forum of Financial Market Regulators continues to discuss issues in connection with segregated funds. The Instrument will apply to hedge funds that are reporting issuers. Consistent with our regulatory regime, the Instrument will not apply to hedge funds that are sold under prospectus exemptions in securities legislation.
Still, another commenter asked that we specify whether income trusts are excluded or included in the Instrument.	The Instrument would not apply to income trusts that are the subject of National Policy 41-201 – *Income Trusts and Other Indirect Offerings* such as business income trusts. The Instrument does, however, apply to income trusts that are investment funds such as exchange traded and closed end funds.

Smaller Investment Funds

We request additional comment on the impact of including smaller investment funds in the Instrument.

Specifically, we would like feedback on our view that, with fewer conflicts of interest to address, an IRC will be less costly for smaller funds. We also seek specific data on the anticipated costs of complying with the Instrument for small investment funds, relative to the other costs of the investment fund.

We would also like to understand what commenters consider 'smaller' – is it a test based on the size of the investment fund? Or the fund manager? Or the number of investors in the investment fund?

The BC Securities Commission has additional questions they would like to ask on this subject. These questions are in the local cover notice published in British Columbia.

Comments	***Responses***
Inclusion of Small Funds under the Instrument Many commenters were supportive of the inclusion in the Instrument of smaller investment funds, telling us that despite the size of the fund, there will always be conflicts of interest that arise which need to be the subject of IRC oversight and review. Another commenter specifically told us that the size of a fund or fund complex should not determine whether investors do or do not enjoy the	***Response*** We agree with the commenters. The Instrument continues to apply to smaller funds.

protections afforded by IRCs. We were told that the focus should be on the needs of the investor, and not on the fund companies.	
Two commenters suggested that any conflicts of interest faced by smaller fund complexes can be adequately dealt with at the level of the board of directors of the manager and by the independent directors of that board. One of these commenters told us that the powers conferred upon the IRC should be attributed to the board of directors of the manager who would in turn see to the application of the Instrument for funds with less than $25 million in assets. As an alternative, this commenter proposed that the Instrument allow companies having less than $500 million under management to establish an IRC only if they do not comply with NI 81-102. In this commenter's view, whether or not an IRC should be required for small companies should be determined in relation to the commercial activities they plan to undertake.	We generally disagree that independent directors of a fund manager's board are an adequate substitute for the independence brought to bear by an IRC. Even independent directors of a fund manager are, or certainly have the potential to be, conflicted in instances where the fund manager's shareholders' interests conflict with those of the fund's unitholders. One exception, however, as explained in the Commentary could be "owner-operated" investment funds, sold exclusively to defined groups of investors, such as members of a trade or professional association or co-operative organization, who directly or indirectly, own the manager. In these investment funds, the CSA view the interests of the fund manager's shareholders and fund investors as aligned.
Another commenter suggested that if the appointment of an IRC is considered appropriate in all cases, a two-tier set of compliance requirements should be set out in a manner similar to the size-based two-tier structure used for compliance by venture exchange issuers as compared to other issuers under National Instrument 58-101 *Disclosure of Corporate Governance Practices*.	We have concluded that some form of two-tier structure similar to that imposed upon non-investment fund operating businesses under NI 58-101 would be inappropriate for investment funds. We believe that the nature of conflicts faced in the management of investment funds differ from those of regular operating businesses. In addition, the lower tier issuers under NI 58-101 are more easily defined and subject to alternative regulatory requirements designed for smaller issuers under the auspices of the TSXV. From a policy perspective, we cannot rationalize a two-tiered system given our view that unitholders of both large and small funds should be equally protected under the Instrument.
Anticipated costs for 'smaller' investment funds One commenter remarked that just as financial capital requirements are prerequisites to participate in the investment business, governance 'capital' should also be an essential prerequisite for participating in the fund industry. A number of commenters, however, continued to express concern about the cost to smaller funds of complying with the Instrument.	We continue to believe that every mutual fund family, large or small, faces business conflicts of interest which can benefit from IRC oversight. While we are sensitive to the cost concerns of an IRC for small mutual funds, we believe that with no structural conflicts and fewer business conflicts (if the fund employs a largely outsourced structure) the mandate and administration of an IRC for a small mutual fund

	will be much less burdensome than larger fund complexes, and therefore, less costly. For example, we expect fewer meetings of the IRC. Further, the Instrument does not prevent investment funds from sharing an IRC with another investment fund manager. Managers of smaller families of investment funds may find this a cost-effective way to establish IRCs for their funds.
Defining "smaller" Four commenters provided us with submissions regarding how to define 'smaller' investment funds. The commenters suggested that we look to the following factors: asset size, number of unitholders, the size of the mutual fund complex (affiliation with other entities), and the number of funds managed by the manager. One commenter suggested a threshold of $25 million of investments, which has been acceptable for a Toronto Stock Exchange (TSX) listing, and a 300 public holder threshold, which is comparable to the minimum number of holders required for a TSX listing. Another commenter suggested that assets under management of $100 million or less may be appropriately considered 'small'.	We thank the commenters for their submissions. We have, however, decided that the Instrument will apply to smaller investment funds.

2. The Instrument will keep existing conflict of interest and self-dealing prohibitions in securities legislation, and exempt specified transactions with IRC approval.

Keeping Existing Rules

We request comment on this approach and the exemptive provisions in the Proposed Instrument and consequential amendments to NI 81-102.

Specifically, we would like feedback on whether the drafting of these provisions effectively captures the conflict of interest exemptions the CSA has granted to date, and whether the conditions accompanying the exemptions in the Proposed Instrument and NI 81-102 are appropriate.

The BC Securities Commission has additional questions they would like to ask on this subject. These questions are in the local cover notice published in British Columbia.

Comments	*Responses*
Our Approach to keeping existing Instruments We generally received support from commenters on our approach to allow for exemptions from the current conflict of interest Instruments where the IRC has given its approval, subject to ongoing monitoring of the manager's compliance with its policies on such transactions.	***Response*** We agree with the commenters and will maintain the existing conflict of interest and self-dealing prohibitions in securities legislation and exempt specified transactions with IRC approval.
Conflict of Interest Exemptions One commenter sought clarification on the following provisions which seemed to contradict the terms imposed by the CSA in recent exemptive relief orders.	
Purchases during a distribution and purchases of private placements would not be permitted under section 4.1 of NI 81-102 because such purchases would not be on a stock exchange.	Consistent with the exemptive relief the CSA has granted to date, we have amended section 4.1 of NI 81-102 to clarify that a dealer managed fund may purchase during the distribution period if the distribution is under a prospectus or during the 60 day period following the prospectus qualified distribution if the fund makes the purchase on an exchange on which the class of equity securities of the issuer is listed and traded. However, funds must continue to apply for discretionary exemptions in connection with purchases under a private placement.
Purchases of both new issues and private placements would not be permitted under section 6.2 of the Instrument because such purchases would not be on a stock exchange. Another commenter asked us to consider expanding section 6.2(2) of the Instrument to include other types of investments prohibited under the "mutual fund conflict of interest investment restrictions" securities regulators have previously provided exemptions from.	We do not propose any change to section 6.2 of the Instrument in response to the comment provided. The exemption is consistent with the exemptive relief the CSA has routinely granted. Other types of prohibited transactions with which we have less familiarity will continue to require exemptive relief to proceed.
One commenter submitted that the IRC should not be permitted to approve transactions prohibited by securities laws.	We continue to believe it is important to give fund managers some flexibility to engage in these types of transactions. Based on our own experiences with exemptive relief granted to date, we are comfortable that IRC oversight and approval can be effective in addressing the conflicts of interest in these types of transactions. The Instrument is also expected to contribute to more efficient Canadian capital markets, by permitting fund managers to engage in certain types of conflict of interest transactions without prior regulatory approval, provided the IRC approves.

3. The Instrument now provides the IRC with effective methods to oversee and report on manager conflicts of interest.

We request comment on this approach.

Comments	*Responses*
	Response
Reporting Requirements Generally Several commenters expressed support for the reporting requirements in the Instrument noting they are an integral part of improving governance in the fund industry.	We agree with the commenters and continue to believe that the reporting requirements are necessary to address previous concerns regarding the IRC's lack of effectiveness. We have, however, amended some of the provisions regarding reporting to the securities regulatory authorities as described below to clarify our expectations.
Materiality and Confidentiality of Reports One commenter suggested that the reporting provisions in sections 4.3, 4.4, and 4.5 of the Instrument should be subject to a 'materiality' standard , and that they maintain appropriate confidentiality.	We have not imposed a materiality standard in connection with these reports for several reasons. First, the report prepared under section 4.3 is provided to the fund manager with a view to assisting it in improving its policies and procedures. Secondly, the reports prepared under sections 4.4 and 4.5 relate to conflict of interest matters which, by definition, incorporate a reasonable person standard. We also expect IRCs will exercise good judgment with respect to the reports that they will prepare under sections 4.3, 4.4, and 4.5. The report prepared under section 4.3 is provided to the fund manager only. We continue to believe that investors are entitled to the information contained in the report to securityholders prepared under section 4.4. The notification provided to securities regulatory authorities under section 4.5 is not required to be publicly filed.
IRC Reporting to Securities Regulators Many industry commenters expressed reservation about the provisions which allow the IRC to communicate with securities authorities. Others raised a concern with the broad wording of section 3.9(1)(e) given the fund manager's existing fiduciary duty, with one commenter suggesting IRC communication should only be done in exceptional circumstances where the IRC believes that the manager is in violation of securities regulations.	We expect it will be rare that an IRC feels compelled to exercise its authority to report directly to us and expect that IRC's will exercise good judgment in this regard. We have added further guidance in the Commentary regarding the use of this authority.

	We have, however, consistent with previous discretionary exemptions that we have granted, maintained the requirement in section 4.5 that the IRC notify us in writing if it is aware of an instance were the manager acted in a conflict of interest matter under subsection 5.2(1) but did not comply with a condition or conditions imposed by securities legislation or the independent review committee in its approval. We continue to believe that this notification is important as the conflict of interest matters in subsection 5.2(1) are fundamental self dealing provisions under securities legislation. We have clarified our expectations in this regard in the Commentary to section 4.5.
Reporting to Securityholders One commenter suggested that the Instrument give a fund manager the right to include its own statement in the IRC's annual report on why it did not follow any particular IRC recommendation. This would provide a fair and balanced perspective, remarked the commenter.	We don't believe that it is necessary for the fund manager to provide its own statement in the IRC's annual report for it to be fair and balanced. As discussed above, we expect that IRC's will exercise good judgment in the reports that they prepare. In addition, a fund manager remains free to provide its perspective in other disclosure documents if it so chooses.

4. The Instrument now specifies the key governance practices we expect of the IRC and the manager.

We request comment on this approach. Specifically, we would like feedback on whether these provisions are best suited for the Proposed Instrument or should be moved into the Commentary.

Comments	***Responses***
General While some industry commenters supported the specificity on minimum governance practices expected of the IRC and the fund manager other commenters told us that it should be left to the IRC to determine which specific governance practices to adopt, based on its knowledge of and its working relationship with the manager.	***Response*** We continue to believe that it is appropriate to include some mandatory minimum governance practices in the Instrument. We believe this approach will create consistent minimum standards and practices among IRCs and fund managers, and will allow for a meaningful comparison by investors of investment funds.
Another commenter asked that the Instrument provide additional guidance on how securities regulators generally view Commentary in the Instrument from a legal and enforcement perspective. We were told that such guidance	The Commentary may explain the implications of the Instrument, offer examples or indicate different ways to comply with the Instrument. It may expand on a particular subject without being

would be invaluable to the IRC in formulating their mandate and defining the scope of their obligations.	exhaustive. The Commentary is not legally binding, but it does reflect the views of the CSA. The Commentary always appears in italic type and is titled "Commentary" in the Instrument.
IRC Self-Assessment One commenter who expressed support for requiring IRC members to perform a self-evaluation, asked that we consider specifying the factors and criteria that should be used in the evaluation.	We believe the Instrument already imposes the necessary minimum factors and criteria that the IRC should consider in conducting its self-assessment.
Still another commenter told us they have found individual directors tend not to give meaningful or critical feedback of other directors unless they are assured that their comments will be confidential. Accordingly, this commenter suggested that only summaries of the assessments be available to the manager and to securities regulators, and that the chair of the IRC have the obligation to summarize the assessments.	Other than imposing the minimum criteria and factors that the IRC should consider, the Instrument does not mandate the manner in which the IRC must conduct its self-assessment. Consequently, the commenter could organize a self-assessment in the manner described. The Commentary now specifies our expectation that the self-assessment should focus on both substantive and procedural aspects of the IRC's operation. It further specifies that a manager may choose to provide the IRC with feedback on its performance as part of the IRC's annual self-assessment process.
Yet another commenter urged us to consider mandating public disclosure of self-assessments.	We believe that the self-assessment process will likely be more effective if we do not mandate that they be publicly disclosed.
Continuing Education Another commenter requested the Instrument mandate that the IRC consider the necessity of attending continuing education programs as a part of its mandate and annually thereafter. This determination, remarked the commenter, should be left to the IRC. Additionally, section 3.12 should be amended to make clear that the funds are permitted to bear the cost of this education.	Section 3.15 of the Instrument provides that the IRC may reasonably supplement the educational and informational programs provided to its members. We leave it to the IRC to consider whether it wishes to consider continuing education as part of its mandate. We have, however, revised this section to require both the manager and the IRC to provide new IRC members with an orientation to enable the member to understand the role of the IRC as a whole and the role of the individual member. Section 3.13 provides that the fund must pay all reasonable costs and expenses incurred in compliance with this Instrument.

5. The Instrument addresses the liability of IRC members.

We request feedback on this approach.

Comments	*Responses*
Limitation on Liability One commenter remarked that limiting the scope of the IRC's mandate may limit the IRC's corresponding fiduciary duty and duty of care. A few commenters remarked the scope of liability of IRC members still remains largely undefined.	***Response*** We continue to believe, based upon the advice we received, that the Instrument appropriately limits the IRC's fiduciary duty and duty of care based upon the unique and limited role that it will serve.
An existing IRC asked us to include in the Instrument a further statement of our intent that the only duties of the members of the IRC are the duties listed in the Instrument. This IRC went on to suggest some changes to the proposed Commentary to address what appeared to them to be discrepancies with our stated intent.	We are satisfied that the Instrument clearly specifies the requirements of the members of the IRC, including that the IRC is only required to consider conflict matters that the manager refers to it. Accordingly, we have not made any significant changes to the Instrument. The Commentary has been expanded to clarify that while the Instrument does not preclude the IRC and manager from agreeing to IRC functions additional to those prescribed by the Instrument, the Instrument does not regulate those additional functions.
We were told by a few commenters that a lack of appropriate insurance for IRC members would likely discourage otherwise qualified candidates.	We continue to believe, based upon our review and consultations with the insurance industry, that insurance coverage will be available for IRC members at reasonable cost.

6. The Instrument preserves investor votes for changes to the 'commercial bargain'.

We request comment on this approach. Specifically, we would like feedback on the drafting of the proposed amendments to Part 5 of NI 81-102.

Comments	*Responses*
Our Approach Industry commenters seemed generally supportive of the concept that a securityholder vote only be required for changes to a mutual fund that affect the 'commercial bargain' between unitholders and the manager.	***Response*** ***Our Approach*** We agree with the commenters and have not changed our approach in this regard. Consequently, we have not changed the exemptions provided from the requirement to obtain securityholder approval under NI 81-102 based upon IRC approval. Exemptions continue to be provided in connection with a change of auditor and a reorganization between affiliated mutual funds. Otherwise, funds must still obtain securityholder approval for the other changes contemplated under section 5.1 of NI 81-102.
However, two commenters remarked that the requirement of both an IRC recommendation and a securityholder vote is both time consuming and expensive and will provide no meaningful added investor protection in circumstances where securities legislation normally requires unitholder approval, such as an increase in fees. If the manager of a fund is able to convince unitholders that a fee increase is appropriate, that should be sufficient, remarked one commenter.	We continue to believe that the manager (and ultimately the investment fund and securityholders) can benefit from the independent perspective and input of an IRC on all decisions that have an inherent conflict of interest for the manager, including those decisions which are subject to a securityholder vote under Part 5 of NI 81-102. We do not believe that the requirement to obtain IRC input will be expensive or time-consuming.
One commenter told us that we must ensure that IRC approvals or recommendations do not interfere with pre-existing contractual rights of securityholders. For example, the Instrument should not restrict employees of a manager or its affiliates from voting or redeeming their units in a related mutual fund.	The Instrument is not intended to restrict voting or redemption rights. We do not expect IRC approvals to interfere with pre-existing contractual rights of securityholders in the normal course.

Other Comments on the Instrument

General Comments	
Comments	***Responses***
Support for the Instrument Overall, there was support for the Instrument. For instance, many commenters told us that the Instrument is a step in the right direction of improving governance in the fund industry now, and that the IRC requirement will be an efficient form of 'citizen oversight' of funds affecting a wide range of investors. An investor advocate further noted that investment funds are a unique product in that there is a fundamental conflict between the fund sponsor and the small retail investor, the most vulnerable and trusting of all investor classes. One commenter remarked that the IRC was 'unique to Canada' and had much merit. Another commenter saw the IRC as a key building block for the supervision of investment funds stretching out years into the future. Still another commenter said that independent oversight will enhance public confidence in investing in mutual funds and other investment funds, and may assist fund managers in continuing to meet their fiduciary standard of care. Another commenter told us they understand the overall objectives and role securities regulators have contemplated for the IRC and they support enhanced investor protection through independent oversight.	***Response*** We acknowledge the support of the commenters.
Opposed Certain commenters who consider themselves 'smaller' investment funds told us that small funds do not face the structural conflicts contemplated by the Instrument. One of these commenters told us they believe it is contrary to the interests of their unitholders to require all fund companies to meet the onerous requirements of the Instrument when it is the minority of fund companies who have structural conflicts and existing prohibitions already address concerns related to these conflicts.	We continue to believe that the Instrument should apply to smaller funds for the reasons discussed above in our response to the specific comments received regarding the inclusion of smaller funds.
We were also told that the Instrument does not go far enough to recognize the merits of existing governance structures and regulations. For a few commenters, the IRC was seen as an additional and redundant layer of regulation in the context of existing controls.	As discussed above in our responses regarding the expanded scope of the Instrument, we continue to believe that is appropriate to implement consistent governance standards for all funds.

Cost Benefit Analysis Those unsupportive of the CBA told us that the true costs of operating an IRC remain to be seen. We were told that the cost of recruiting, retraining, and insuring IRC members as well as the costs of experts, and the time of IRC members and other employees, were not adequately addressed in the CBA. We heard that the estimated costs related to an IRC's services could be higher than those projected in the CBA.	We acknowledge that there will be costs associated with implementing the Instrument. We continue to believe, however, that there are inherent conflicts of interest in the management of smaller investment funds that will benefit from the independent perspective brought to bear on such matters to an IRC.
We also heard from commenters who remarked that it is self-evident that investors are best served by having some form of independent oversight of the funds, and they are unpersuaded that an extensive cost/benefit analysis is required to prove a need for revisions to the existing regulatory framework for fund governance.	As stated above, in our view, the scope of IRC review for most smaller investment funds (where there are no structural conflicts of interest and where there may be fewer business conflicts, especially if many functions have been outsourced) would be much less burdensome than for larger investment funds, and therefore, less costly. In other words, we perceive the cost burden will be proportionate to the benefit of an independent perspective on conflict of interest matters. We also note the Instrument does not preclude the creation of shared IRCs amongst smaller fund complexes as a means of reducing costs.

Section		***Comments***	***Responses***
Part 1	**Definitions and Application**		
Section 1.3	*Meaning of 'conflict of interest matter"*	The majority of commenters supported the Instrument's principles-based approach to defining conflicts of interest.	***Response*** We agree with the commenters and, consequently, have maintained the Instrument's principles-based approach.
		A Materiality Test Many commenters urged us to include a 'materiality' or 'significance' threshold in the definition. We were told, there could be matters not sufficiently important or material to warrant referral to or consideration by the IRC. It could also cause micromanagement by the IRC, or review by the IRC of numerous	We have not added a materiality threshold into the definition. This does not mean, however, that we expect every conflict of interest to be referred to the IRC. The definition already incorporates a reasonable person test that is designed to provide some limit to the types of conflicts we expect the manager

		immaterial events which will entail much cost and time dealing with 'de minimis' matters for no material benefit.	to refer to the IRC. In addition, we have added Commentary to set out our view that we do not consider the reasonable person test to capture inconsequential matters. We have also communicated our expectation that the manager should look to industry best practices, among other factors, for guidance in identifying conflict of interest matters to be referred to the IRC. For greater certainty, we have amended the definition to specifically list – in new Appendix A to the Instrument – the provisions in securities legislation that could restrict or prohibit an investment fund, manager or an entity related to the manager from proceeding with a conflict matter.
		Resolution in Favour of the Fund One commenter suggested that the definition should make clear that it excludes any matters that the manager chooses to resolve in favour of the investment fund.	As discussed above, we expect fund managers and IRCs to exercise good judgment in assessing potential conflict of interest matters. We do not necessarily agree, however, that the matter should not be submitted to the IRC just because the manager believes it has already resolved the matter in favour of the investment fund. We expect that the fund manager would still put the matter before the IRC including its description of how it has resolved the matter.
		Need for Dialogue One commenter told us that the decision as to which matters are material or significant should be allowed to develop as a healthy dialogue between the manager and the IRC. Another commenter suggested that as standards evolve in this area over time, it	We encourage both fund managers and IRCs to communicate with one another with the goal developing a mutual understanding of what constitutes a conflict of interest matter for their particular fund. We intend to continue to

		would be helpful for the CSA to continue to communicate its thinking on conflicts. Still another commenter suggested that securities regulators create and oversee an investment fund industry sub-group.	communicate our thinking on conflicts, but believe that managers are better placed to assess conflict of interest matters based upon their particular circumstances. We expect industry best practices to develop regarding what constitutes a conflict of interest matter.
		Perceived Conflicts Another commenter expressed concern that the definition appears to include perceived conflicts rather than actual conflicts, in fact, through the use of words such as 'may conflict' and 'may impact'.	We agree with the commenter that the definition includes perceived conflicts. This is our intent. It may be, however, that after referring the matter to the IRC that the IRC and fund manager agree that the matter is not actually a conflict that requires any further action by the manager.
		Original Setting of Management Fees One commenter asked us to explicitly state in Commentary whether we consider the original setting of management fees to be a conflict of interest which is reviewable by the IRC.	We do not consider a manager's initial decision-making in the organization of an investment fund to be subject to IRC review, unless the manager's decisions give rise to a conflict of interest concerning the manager's obligations to existing investment funds within the manager's fund family. However, we anticipate that the fund manager may wish to engage the IRC early in the establishment of the fund to ensure the IRC is adequately informed of potential new conflicts of interest. We have revised the Commentary accordingly.
		Portfolio Managers One commenter repeated their comment from the 2004 Proposal that any conflicts of interest experienced by portfolio managers are not conflicts of the	We have amended the Commentary to clarify our view that the Instrument captures conflicts at the portfolio manager level (or conflicts of any other

		manager. We were told the Instrument needs further clarity about how it applies to potential conflicts at a portfolio manager level. ***IRCs as Audit Committees*** Another commenter queried whether securities regulators intended for an IRC to act as an audit committee concerning the investment funds under its authority. This commenter further queried whether preparation of financial statements and liaising with auditors is a 'conflict of interest' matter.	entity related to the manager captured by the Instrument) only in relation to decisions made on behalf of the fund that may affect or influence the manager's ability to make decisions in good faith and in the best interests of the fund. We expect managers to have knowledge of these conflicts. We have also provided some examples in the Commentary of potential conflict of interest matters at the portfolio manager level that may be caught by the definition of 'conflict of interest matter'. At a minimum, conflict of interest matters would include transactions that the portfolio manager is prohibited from proceeding with by a conflict of interest or self dealing prohibition in securities legislation. We do not intend for the IRC to act as an audit committee. Of course, it always depends on the nature of the particular relationships, but we would not expect the preparation of financial statements and liaising with the auditors to be a conflict of interest matter.
Section 1.4	*Meaning of 'entity related to the manager'*	A few commenters told us that the definition of an 'entity related to the manager' is very broad and potentially captures service providers, such as custodians and transfer agents.	***Response*** We have amended paragraph (b) of the definition by deleting reference to "agent'. We have also amended the Commentary by adding a statement regarding our view that the Instrument is not intended to capture conflicts of interest at the service provider level generally. Additional guidance has also been added on the types of entities that may be captured by the definition of

			'entity related to the manager'. We have also amended a portion of the definition to capture a person or company who can 'materially affect' the direction of the management and polices of the manager or the investment fund.
		Commenters who remarked on this section told us that it is inappropriate and not practical to require a fund manager to be aware of, and refer to the IRC, any conflicts experienced at a third party portfolio manager level.	We refer to our response above under section 1.3 regarding portfolio managers.
Section 1.5	*Meaning of 'independent'*	***Principles Based Approach*** Those who commented were generally supportive of the Instrument's principles-based approach to defining 'independence'. Commenters also expressed support for the removal of the list of prescribed material relationships set out in the 2004 Proposal, noting the list was prescriptive and not focused on whether a person possesses an independent mindset and is able to act without influence.	***Response*** We acknowledge the support of the commenters and have maintained the principles-based approach.
		One commenter, however, said that the value of the principles-based definition has been undermined by the detail in the accompanying Commentary. This commenter suggested deleting the Commentary to allow the definition to speak for itself and to be interpreted, as appropriate, in different circumstances.	We have maintained the Commentary, but do not intend it to serve as a substitute for the exercise of judgment by managers and IRCs. We encourage managers and IRCs, as the Commentary suggests, to interpret the definition and the Instrument based upon their particular circumstances. We have amended the Commentary to further clarify our views regarding the types of

			individuals who may or may not meet the definition of independence.
		Securityholders of the Fund or its Manager One commenter suggested we amend this section to clarify that the 'independence' of IRC members is with respect to the manager or an entity related to the manager, not in relation to the fund.	We believe there may be material relationships with the fund that interferes with an individual's ability to judge conflicts of interest. For example, an executive officer of a fund would not likely be independent for the purpose of serving on the IRC.
		We were told it must be possible to select members of the IRC among securityholders [of the fund] without, however, making it an obligation.	While the Commentary specifies that a material relationship within the definition of independence may include ownership, we continue to expect that only those relationships which might reasonably be perceived to interfere with the exercise of a member's independent judgment to be considered material.
		Another commenter suggested that Commentary specify that share ownership by IRC members in the fund manager or its parent does not automatically 'taint' the independence of those individuals, but rather that the fund manager and the individual should determine whether or not it is material. An investor advocate told us they would not support any compensation scheme that provides IRC members with compensation in the form of company stock or options.	We believe that ownership of a fund's or manager's securities potentially raises difficult issues, but does not necessarily taint an IRC member's independence depending upon the circumstances. For instance, at one end of the spectrum would be an IRC member that holds a small amount of securities through a fully managed account. At the other end, would be an IRC member that holds a large number of securities directly. An IRC member should be careful not to put themselves in a position where their securityholdings can reasonably be seen to compromise their judgment regarding a conflict of interest matter. We have

			determined not to add this point specifically to the Commentary.
		Existing Independent Boards and IRCs One commenter remarked it is important to recognize that members of the industry have already established independent boards in anticipation of the eventual implementation of the Instrument.	We agree. The Commentary specifies that, depending on the circumstances, independent members of an existing advisory board or IRC may be independent for the purposes of the Instrument.
		Representatives of the Fund Manager or its Affiliates Another commenter suggested that we include additional language in the Commentary to clarify that it will be permissible for funds to seed their initial IRC with former directors of the manager who otherwise satisfy the definition of 'independent'.	We agree and have amended the Commentary to explicitly provide that, depending on the circumstances, former independent members of the manager's board of directors or special committee of the board of directors of the manager may be independent for the purposes of the Instrument.
		We were also asked by a few commenters to again consider permitting existing independent fund manager board members to act as members of the IRC.	We do not agree that it is appropriate for existing independent board members of a fund manager to act as members of the IRC. These board members owe a duty to the fund manager's shareholders in addition to the fund's securityholders. We continue to believe there may be instances where these duties conflict such as, for example, where there are competing takeover bids for the manager that impact the fund's unitholders differently. The Commentary recognizes that former independent members of the manager's board may be eligible to serve on an IRC.
		Another commenter also asked us to permit representatives of the	We agree that manager representatives will add value to

		manager to serve as IRC members. Representatives will bring context to IRC meetings and in-depth experience with the day-to-day functioning of investment funds we were told.	the IRC based upon their experience. We continue to believe, however, that it is inappropriate for representatives of the manager to serve as IRC members. We encourage manager representatives to work with the IRC. We have also revised the Instrument to permit manager representatives to be present during IRC determinations if the IRC so chooses.
		We were told by one commenter that the definition of 'independent' and the Commentary seem to preclude independent directors of a manager's subsidiary or affiliate from acting as members of the IRC for that manager's investment funds.	We continue to believe that it is inappropriate in most instances for the independent directors of a manager's subsidiary to act as a member of the IRC for the reason discussed above. Such a director still owes a duty to the subsidiary's shareholder which, in this case, would be the manager itself. This duty could conflict with the duty owed to the fund's securityholders.
		Directors of Trust Company Another commenter remarked that the definition of 'independence' seems to prohibit a fund manager from using the Board of Directors of a registered trust company as its IRC, if that trust company were related to the fund manager (even if the directors are independent within the meaning of trust company legislation). This commenter requested the definition provided in subsection 2.4(4) and its related Commentary found in the 2004 Proposal be put back in.	The Commentary continues to provide our view that, depending on the circumstances, independent members of the board of directors of a registered trust company that act as trustee for an investment fund may be independent. Where the trust company is related to the manager, we believe the circumstances become potentially more difficult. The manager and IRC must assess whether the IRC member's role with the trust company could be seen to reasonably interfere with their judgment regarding a conflict of interest matter.

		Prescribed Period Still another commenter reiterated their comment from the 2004 Proposal that we introduce the 'prescribed period' concept found in MI 52-110 *Audit Committees* so that individuals would only be considered non-independent under the Instrument if they have or have had a specified relationship during the prescribed period that begins after the Instrument becomes final.	As previously stated, the Instrument now allows individuals with existing relationships with the investment fund, manager or an entity related to the manager (as defined in the Instrument) to act on the IRC, provided they meet the 'principles' based definition of independence. We recognize that the 'principles based definition of independence in the Instrument has the effect of potentially barring an individual's participation on an IRC for a relationship which extends beyond the previously prescribed 'cooling off' period. We consider this outcome appropriate.
		LSIFs We were told that labour sponsored investment funds and labour sponsored venture capital corporations already have independent representation on their boards from labour unions and it was suggested that the Instrument reference the existence of these representatives under this section and under the nominating criteria of section 3.3.	Please see our discussion regarding LSIFs in the Expanded Scope section above. We still believe that it is appropriate for LSIFs to have an IRC. To the extent, however, that an LSIF already has independent members on its board, it's possible that these board members can serve on the LSIF's IRC. The Commentary to the definition of independence provides that, depending on the circumstances, independent members of a fund's board of directors may be independent.
		Disclosure Finally, it was suggested by one commenter that the basis for the determination of an IRC member's independence be disclosed in a fund's annual AIF and a cross-reference to this AIF disclosure should be included in the IRC's annual report to	We agree with the relevance of this disclosure. We have amended section 4.4 of the Instrument to require the IRC to provide in its report to securityholders a description of any relationship that may cause a reasonable person to question the

		securityholders.	member's independence, and the basis used by the IRC for determining that the member is independent.
Section 1.7	*Meaning of 'manager'*	A number of commenters expressed confusion that the Commentary to the definition of 'manager' suggests the possibility of there being more than one manager of the fund.	***Response*** We have amended the Commentary to delete the reference to circumstances meriting the designation of more than one person or company as "manager". It was not our intention to suggest that there may be more than one manager of the fund. We have added examples in the Commentary of the types of managers the definition may capture. We have also specified in the Commentary, that we may examine a fund if it seems that it was structured to avoid the operation of the Instrument.
Part 2	**Functions of the Manager**		
Section 2.2	*Manager to have written policies and procedures*	One commenter requested more guidance on minimum standards for policies and procedures to be adopted by managers. Another commenter further recommended that similar Commentary to that found in section 4.1 be included here, and suggested that the following concepts are missing from this section of the Instrument: • a fund manager must consider the input of the IRC and its fiduciary obligations in finalizing its policies and	***Response*** We have not added more guidance regarding appropriate minimum policies and procedures. We continue to believe that it should be left to the manager to create appropriate policies and procedures based upon its particular circumstances. We have made some of the changes suggested. For example, we have added a new subsection (2) to require the manager, in establishing its policies and procedures, to consider input of the IRC, if any. We have also articulated our expectation that if an unanticipated conflict of interest matter arises for which the manager does not have a policy and procedure, we expect

		procedures • thereafter, the fund manager must follow these policies and procedures in dealing with any conflict of interest, and • if the fund manager wishes to take a different action which is not permitted under its policies and procedures it must take this proposed action to the IRC for review and input .	the manager to bring the matter and its proposed action to the IRC for its review and input at the time the matter is referred to the IRC. We remain satisfied that the Instrument appropriately sets out the steps a fund manager must follow.
Section 2.3	*Manager to maintain records*	We were asked by one commenter to clarify in subsection 2.3(a) whose meetings are being referred to, the manager's meetings, those of the board of directors, the IRC, or others. This commenter also suggested we add a requirement for a record of the actions taken by the manager in respect of a conflict matter referred to the IRC and questioned the reference to "investment fund' in Commentary 1.	***Response*** We have revised the Commentary to clarify that a manager is expected to keep minutes only of any material discussions it has at meetings with the IRC or internally on matters subject to the review of the IRC. We have revised the Commentary regarding our view that the requirement for the manager to maintain records would include the actions it takes in respect of a matter referred to the IRC. We have also deleted the reference to investment fund in Commentary 1.
Section 2.4	*Manager to provide assistance*	One commenter remarked that this section gives a manager broad discretion to provide whatever information it wants to the IRC. The assumption, we were told, is full, true and plain disclosure, but a manager could skew any particular results by giving a different tone to whatever information is produced or provided to the IRC.	***Response*** We do not believe that the section provides a manager with the discretion to provide whatever information it wants. The obligation is to provide the IRC with information sufficient for the IRC to properly carry out its responsibilities. We expect that, consistent with their fiduciary duty and standard of care, fund managers will fulfill

			this obligation in good faith.
		One commenter suggested we similarly add the manager's proposed policies and procedures to subparagraph 2.4(1)(a)(ii) .	We have made the suggested change.
		This same commenter also urged us to delete or to provide greater clarity in subsection 2.4(2) on when a manager would be considered to have 'prevented' or 'attempted to prevent' the IRC from communicating with securities regulators.	We do not believe that additional clarity is needed.
Part 3	**Independent Review Committee**		
Section 3.1	*Independent review committee for an investment fund*	***Sharing IRCs*** Responding to Commentary 2, some commenters told us that for competitive reasons, they do not believe IRC members will be shared amongst fund managers.	***Response*** We recognize that some fund managers will not want to share IRC members. We continue to believe, however, that fund managers should have sufficient flexibility to determine how best to structure their IRCs in a manner suitable to their funds and business operations. We consider that sharing IRCs may be appropriate where warranted by circumstances such as the size of the manager, the funds or fund families. We continue to believe that the final determination as to how IRCs should be structured, rests with the fund manager. This view is captured in the Commentary.
		Creation of IRCs by 'for profit' firms We were also told of concerns regarding the development of 'for	As indicated in Commentary, we continue to believe that managers

		profit firms' being created for the sole purpose of providing shared IRCs to smaller fund managers.	of smaller funds may find this option to be a cost-effective way of establishing IRCs for their funds. We believe that concerns regarding for profit IRCs and their members are addressed through the minimum standards set out in the Instrument regarding, for instance, nominating criteria and composition. We also expect that concerns regarding the quality of IRC members will be addressed through the manager and IRC's initial orientation of IRC members mandated by the Instrument and through ongoing education and training. The Commentary expresses our view that the Instrument does not prevent a third party from establishing an IRC or IRCs for investment funds. Any IRC must comply fully with the Instrument.
Section 3.2	*Initial appointment*	***Reappointment of existing IRCs*** One commenter remarked this section is drafted as if no existing fund complex has an IRC. We were told this section should reflect that these managers are not required to 'reappoint' these members. We were also told that this section should also recognize that for some governance agencies, such as a board of directors of a registered trust company, the fund manager	***Response*** We recognize that certain fund complexes already have existing IRCs in place. However, we expect a manager to turn their mind to appointing an IRC which complies with this Instrument. If an investment fund has an existing oversight body that complies with this Instrument, we expect the manager will appoint these members as the first IRC under the Instrument if they choose. A manager must appoint the fund's first IRC and the IRCs must have the ability to appoint vacancies. We expect a manager to choose an IRC which will have the ability to comply with

		will have no ability to reappoint an IRC. ***Appointment of IRCs*** Two commenters remarked they believe the fund manager should be responsible for the appointment of all IRC members, not just initial members as indicated in this section. The commenters understood the concerns of an appearance of bias, but they believe that the ability of the manager to appoint IRC members will serve as a check and balance and ensure a dysfunctional IRC cannot perpetuate itself indefinitely. We heard from another commenter who considered the ability of the manager to appoint even the initial IRC undermines its 'independence'. It was recognized, however, that in the absence of any mandatory appointments by securities regulators, there really is no other way.	the Instrument. We continue to believe that IRC appointment of members on an ongoing basis (after initial appointment by the manager) is the best way to foster an independently-minded IRC. The Instrument, however, specifies that the IRC must consider the recommendations of the manager when filling a vacancy on the IRC or when reappointing a member of the IRC. As discussed under section 3.6, in response to hearing that there should be a 'check and balance' on IRC appointments, we have imposed a maximum term limit on IRC members. This term limit may only be extended upon agreement of the IRC and the manager.
Section 3.3	*Nominating criteria*	One commenter recommended that a fund's AIF include disclosure relating to the competencies and experience of IRC members.	***Response*** We continue to believe that our requirements to disclose the names and composition of the IRC are sufficient.

Section 3.4	*Written charter*	***Further guidance and separate charters*** It was suggested by one commenter that we remove in the Commentary the securities regulators' expectation that there will be separate charters for each fund family. This commenter remarked it is likely that there will be greater differences across funds within a fund family rather than across fund families.	***Response*** We have removed our expectation of separate charters for each fund family from the Commentary. Although such arrangements are not precluded by the Instrument, we have revised the Commentary to clarify that the Instrument permits, but does not require, separate charters for each fund family should a manager so choose.
		Another commenter requested that we provide more guidance on the items which should be included in the IRC's charter.	We have added further guidance in the Commentary regarding what should be included in the IRC's charter. For example, the Commentary now sets out our expectation that the written charter include a policy relating to IRC member ownership of units of the investment fund, manager, or any person or company that provides services to the mutual fund or the manager. We continue to believe, however, that the IRC should determine what to include in its charter based upon its particular circumstances.
		Broader mandate of the IRC Still another commenter recommended that the Instrument or the Commentary be revised to clarify that any role the IRC and the manager agree upon that is in addition to the role mandated by the Instrument, is not subject to the Instrument. It was suggested that Commentary similar to paragraph 3 of section 2.5 of the 2004 Proposal be reintroduced. Without this assurance, this commenter told us a fund complex or IRC member may be loathe to take	As noted under our discussion on liability, we have revised the Commentary to specify that while the Instrument does not preclude the IRC and manager from agreeing to IRC functions additional to those prescribed by the Instrument, the Instrument does not regulate those additional functions.

		on any roles additional to those prescribed by the Instrument. The commenter also urged us to provide further clarity on the meaning of the fourth bullet point in Commentary 3. ***Disclosure of charter*** Finally, one commenter suggested that the IRC's charter should be posted on a fund's website and disclosed in a fund's AIF to increase transparency of the IRC's mandate and functions. Conflict of interest matters identified by the manager to be reviewed by the IRC in the normal course should also be disclosed in the IRC charter, remarked this commenter.	We have revised the fourth bullet point in Commentary 3 to provide greater clarity. A summary of the IRC's mandate must be disclosed in an investment fund's prospectus. We consider this disclosure to be sufficient.
Section 3.5	*Composition*	Commenters who responded were generally supportive of the Instrument's flexibility in allowing fund managers to determine how best to structure their IRCs. ***Responsibility of IRC chair*** Two commenters expressed concern about our expectations for the duties of an IRC chair outlined in paragraph 2 of the Commentary.	***Response*** We agree with commenters who concurred with the need for flexibility in the Instrument to allow managers to determine how to structure their IRCs. We continue to believe that the chair's responsibilities are appropriate within the context of the IRC's functions. We have, however, provided additional guidance regarding our view of the chair's responsibilities. In addition, we remind the commenters that responsibility for identifying and referring conflict of interest matters to the IRC rests with the manager, not IRC chair.

Section 3.6	*Term of Office and Vacancies*	***Term of office*** One commenter expressed their preference for more flexibility in the term of office because they elect directors for their mutual funds organized as corporations on an annual basis, and it is administratively easier if the terms can be consistent. ***Self-Perpetuating IRC*** Another commenter urged us to reconsider the potential development of self-perpetuating IRCs or entrenched boards.	***Response*** For greater clarity, we separated the provisions in the Instrument regarding vacancies and terms of office. We have revised this section to specify a minimum term of 1 year and a maximum term of 3 years. We reiterate our view that we consider self-selection of IRC members to be the most appropriate way to foster an independently-minded IRC. We were, however, persuaded by requests for manager input into the selection process for IRC members and concerns about an ineffective, entrenched IRC. Accordingly, the Instrument now requires the IRC to consider manager recommendations, if any, when filling a vacancy on the IRC or when reappointing a member of the IRC. In addition, the Instrument now specifies a maximum term limit for IRC members of 6 years on an investment fund's IRC, with reappointments beyond the maximum term only by agreement of the IRC and the manager. We consider the maximum term limit will enhance the independence and effectiveness of IRCs.
Section 3.7	*Standard of care*	A few commenters, among them an existing IRC, told us that the Commentary should include a clear statement that the only duties that are subject to the Instrument are the duties listed. One commenter remarked this	***Response*** We are satisfied the Instrument clearly sets out the role of the IRC.

		seemed consistent with our intent to limit IRC member liability. Another commenter recommended that the Commentary be modified to articulate what common law defences the securities regulators believe are available to IRC members.	 We do not consider it appropriate to specify what defences should be applied to IRC members in the normal course. The successful use of these defences rests ultimately with the courts and judicial process.
		Limiting Liability Two commenters told us there should be a limit on the liability of IRC members to take into account the limited scope of their role.	In response to concerns raised about the potential unlimited liability of IRC members, we retained legal counsel to provide us with advice on this issue. Based on this advice, the 2005 Proposal was revised to emphasize the limited scope of the IRC's mandate which in turn should limit the IRC's corresponding fiduciary duty and duty of care. We were advised that by clarifying in the Instrument the very specific functions, duties and obligations of the IRC, we will have clarified that the IRC has a very limited role, particularly as compared to the role of corporate directors. We were also advised that the inclusion of a fiduciary duty and duty of care as well as language that mirrors certain defence provisions in corporate law statutes should serve to provide guidance to insurers and to the courts as to how we view the IRC's role.
		Liability and Standard of Care One of these commenters said they do not believe IRC members who are not corporate directors should be subject to the same liability as corporate directors when they do not have	We agree with the commenter and continue to believe that to the extent the Instrument imposes liability on IRC members, that liability is commensurate with the narrow

		the same scope or the same duties.	mandate of the IRC to review conflicts of interest. In accordance with the legal advice we received, an IRC member's exposure to liability in connection with the responsibilities mandated in the Instrument is limited, when compared with the exposure to liability of a corporate director. Also, the protection available to an IRC member under the Instrument with respect to the discharge of those responsibilities is no less than that available to a corporate director. We are satisfied that subsections (3) and (4) in this section provide guidance on how an IRC member meets the standard of care.
Section 3.8	*Ceasing to be a member*	Among the causes in subsection (3) that require IRC members to cease from continuing their membership, we were asked by one commenter to add when a member becomes subject to regulatory or criminal sanctions. Another commenter strongly recommended that the Instrument permit a fund manager to remove an IRC member if that member becomes a member of an IRC for another fund complex. It should be permissive, we were told, but we should be sensitive to competition in the fund industry. This commenter also recommended we redraft subsection (3) to give the fund manager the ability to decide	***Response*** We have added additional causes to subsection (3), among them, when a member is subject to penalties or sanctions made by a court related to securities legislation. We disagree with the commenter. The manager already has the ability to remove an IRC member. We have, however, revised the Instrument to require the IRC to disclose in its report to securityholders the name of any other fund family on whose IRC the member serves. We consider that whether an IRC member is independent under the Instrument is a matter of fact. We note that a fund manager

		whether it believes an individual is no longer 'independent' and therefore can remove and replace that member. The manager, we were told, should have this responsibility and right.	retains the right to remove an IRC member by securityholder vote. Accordingly, we have not revised the Instrument. We have, however, amended section 4.4 of the Instrument to require the IRC to provide in its report to securityholders a description of any relationship that may cause a reasonable person to question the member's independence.
		The commenter also remarked they did not see the necessity in 3(a) for the words "and the cause of the non-independence is not temporary..." since the test for independence is sufficiently clear and principles-based that either one is independent or one is not.	We disagree with the commenter. Newly named paragraph 3.10(3)(a) is intended to exclude a situation where a member may in fact, or be perceived to face, a conflict of interest with respect to a specific (one-time) conflict of interest matter being considered by the IRC.
		Notification of changes in IRC membership Finally, this commenter reiterated their query made in the 2004 Proposal asking us to clarify why securities regulators want notification when an individual ceases to be an IRC member in certain circumstances.	As previously stated, we believe that the resignation, removal or disqualification of one or more IRC members may be an early warning sign of a larger, more systemic problem with the IRC or manager. Upon receipt and review of such information, our intention is to determine if further follow-up with the IRC or manager is warranted. We consider this approach to be consistent with the CSA's increasing emphasis on continuous disclosure and compliance reviews.
		Change of manager Another commenter told us if the IRC is truly 'independent', a change of manager or a change in control of manager should not necessitate a change in IRC membership or composition. Accordingly, section 3.8(1)(f)	A change in manager could result in changes to the fund's operations, policies, and procedures. Consequently, we continue to believe that it makes sense for the new manager to set its mind to the role of the IRC.

		and section 3.8(1)(g) should be removed.	We specify in the Commentary, however, that the new manager is not precluded from appointing members of an IRC used by the previous manager.
Section 3.9	*Authority*	***Communication with regulators*** A number of commenters expressed concern that the authority conferred by subsection (1)(e) for IRC members to communicate directly with securities regulators was too broad and potentially expanded the IRC's duties.	***Response*** We continue to believe that an IRC should be able to communicate with securities regulators. We have added guidance in the Commentary to specify, however, that the IRC has no obligation to report matters other than those prescribed by this Instrument or elsewhere in securities legislation.
		Manager communications with regulators One commenter suggested that the Instrument should allow a manager to communicate with securities regulators regarding the IRC. We were told that the Instrument should provide a mechanism for a manager to have recourse in the event that an IRC is not functioning effectively or is making decisions that are contrary to the best interests of either the funds or its investors.	We have revised the Commentary to specify that the Instrument does not prohibit the manager from communicating with securities regulators with respect to any matter. We are satisfied that the ability of the manager to remove an IRC member by vote at a securityholder meeting is sufficient recourse for the manager.
		Searching out conflicts of interest Other commenters asked that additional clarity be added to indicate that the IRC is not responsible for making business and operational decisions of the manager and that the IRC has no duty to seek out potential conflict of interest matters. Yet, we also heard from an investor advocate who urged that an IRC be	Section 5.1 of the Instrument specifies that the manager is responsible for referring conflict matters to the IRC for its review. While we expect the IRC to bring a high degree of rigor and objectivity to its review of conflict of interest matters, we do not consider it to be the role of the IRC to second-guess the

		responsible for proactively searching out and reviewing conflict of interest matters, and not simply rely on the manager to bring conflict matters to it for review.	investment or business decisions of the manager or entity related to the manager. The Commentary has been revised to reflect this view.
		Compensation and Experts Several commenters continued to express concern regarding the IRC's ability to set its own compensation. One commenter suggested that we revise subsection (d) to state that the IRC must take into account the manager's recommendations in setting its compensation.	In response to comments, we have revised the Instrument to require the manager to set the initial compensation of the IRC. The IRC, going forward, is then expected to set its own compensation. The Instrument now also specifies that the IRC, in setting its compensation, must consider its most recent assessment of its compensation and the manager's recommendations, if any. The Instrument continues to require the IRC to disclose in its report to securityholders if in setting its compensation, it has not followed the recommendation of the manager and its reasons. The IRC report now additionally requires the IRC to describe the process and criteria it has used to determine its level of compensation.
		Experts and external counsel We were told that the Instrument should state that appropriate use of external counsel or other advisors should only be for specific items where the IRC determines the need for independent advice in warranted circumstances.	We continue to believe that an effective IRC must have at its disposal all of the tools necessary to assist the IRC in fulfilling its mandate under the Instrument. This includes the authority to hire experts and independent counsel as required to assist the IRC in making its determinations on conflict matters. It is not our expectation, however, that an IRC will routinely use external counsel or other advisors. We have revised the Commentary to clarify our expectation that independent advisors will be

			used selectively and only to assist, not replace, IRC decision-making.
		Other commenters told us that the manager should have the power to set a limit on costs that can be incurred by the IRC. In cases where the IRC would propose to exceed this limit, the board of directors of the manager should decide whether such costs are appropriate.	We continue to believe that a manager should not have the power to set limits on costs. We expect IRCs to conduct themselves consistent with the standard of care imposed by the Instrument.
		Other An additional item one commenter recommended we add to section 3.9 was to give the IRC the right to terminate a manager if it demonstrates gross incompetence, consistently underperforms the benchmark or peers, consistently fails to follow the fund's stated investment policy, or charges excessive fees.	We do not propose to give the IRC the ability to terminate the manager. We consider the choice of manager to be an integral part of an investor's decision in purchasing an investment fund, and accordingly, do not believe that the IRC should have this authority.
		This commenter also asked that we clarify whether the IRC will have unimpeded access to internal audits, client complaint summaries, external auditors, and fund compliance officers in the performance of its duties.	The Instrument specifies that a manager must provide the IRC with any assistance it reasonably requests in its review of matters referred to it.
		We were also asked to clarify whether loans to or from related parties will be part of IRC oversight.	IRC oversight could extend to loans to or from related parties if they are conflict of interest matters, as defined in the Instrument.
		Delegation by IRC Other commenters reiterated their comments from the 2004 Proposal that we expressly authorize an IRC to delegate defined responsibilities to a sub-committee of at least three members. This approach is consistent with corporate	We were persuaded by this comment. Accordingly, we have revised the Instrument to expressly permit an IRC composed of more than three members to delegate any function to one or more committees of at least three

		statutes, we were told, and is needed to allow the committee not to require the 'full' IRC's approval.	members of the IRC, except for the removal of a member of the IRC. The Commentary has been amended to specify that despite any delegation, the IRC remains responsible for all functions delegated under the Instrument.
Section 3.10	*Fees and expenses to be paid by the investment fund*	One commenter remarked that this section appears to assume all IRC costs will be paid for by one fund. We were asked to redraft this section to require fund managers to equitably and reasonably allocate IRC costs amongst the funds under an IRC's authority.	***Response*** ***Allocation of Costs to Funds*** We have revised the Commentary to set out our expectation that we expect a manager to allocate costs associated with its IRC on an equitable and reasonable basis amongst the investment funds for which the IRC acts. We have also clarified in the Commentary our view about what IRC costs may appropriately be charged to the investment fund.
		While one commenter asked that the Instrument provide an exemption from the unitholder approval requirement for an increase in fees which result solely from complying with the Instrument, another commenter acknowledged our earlier response to this question, and urged us to include the response in the Commentary to this section to provide future clarity and guidance.	As we previously responded, we do not consider the expenses incurred by the introduction of the IRC in the Instrument to be caught by section 5.1 of NI 81-102. Our view is that the purpose of section 5.1 is not to capture the costs associated with compliance by an investment fund of new regulatory requirements. We have articulated this guidance in the Commentary to the transition section of the Instrument.
		Disclosure One commenter disagreed that there be disclosure in a fund's prospectus of whether or not a manager reimburses the fund for fees and expenses payable to the IRC. They said the current MER waiver disclosure that is already required is sufficient.	We disagree with the commenter. We believe prospectus disclosure of how IRC fees and expenses are paid is important.

		Other One commenter told us that the manager should have the power to set a limit on costs that can be incurred by the IRC. In cases where the IRC proposes to exceed this limit, it should be up to the board of directors of the manager to decide whether those costs are appropriate, remarked this commenter.	We disagree with the commenter. We do not believe that the right of a manager to limit costs incurred by the IRC is consistent with the role of the IRC as an independent body.
Section 3.11	*Indemnification and insurance*	A few commenters told us not to regulate the form of indemnity or the payment of premiums the fund manager wishes to provide IRC members. One of these commenters recommended that further analysis and consideration be given to how a claim under an indemnification obligation should be worked into a daily NAV calculation for an investment fund.	***Response*** Consistent with the legal advice provided to us, we have drafted this section in a way that is analogous to the CBCA to message that it be interpreted in a way parallel to the provisions in the CBCA. We have provided additional guidance in Commentary regarding indemnification of IRC members. Upon review, we would expect a claim for indemnity to be accounted for using appropriate accounting principles.
Part 4	**Functions of Independent Review Committee**		
Section 4.1	*Review of matters referred by manager*	***Deliberating and Deciding in the Absence of Management*** A number of commenters expressed concern at the requirement in subsection 4.1(3) requiring the IRC to make decisions in the absence of any	***Response*** We agree with commenters who told us that the IRC should have discretion to determine whether representatives of the manager should be present when the IRC

		manager or any entity related to the manager. ***Annual meeting in absence of manager*** One industry commenter agreed with the requirement for the IRC to hold at least one meeting annually in the absence of management. In fact, this commenter suggested we consider requiring more than one meeting, in order to promote trust, good group dynamics, and familiarity amongst IRC members and with the business of the funds. ***Taking minutes*** Still other commenters expressed concern over who would be responsible for taking minutes at these 'in camera' IRC meetings. Another commenter asked us to consider whether the manager will be prohibited from viewing the minutes of the 'confidential' meeting described in subsection (5). ***Other*** One commenter suggested we delete subsection 2(b) noting that it would be a backward step for the Instrument to mandate an IRC to 'perform other functions as may be agreed in writing'.	deliberates. The Instrument has been amended accordingly. Consistent with governance principles, the Instrument continues to mandate at least one annual meeting of the IRC in the absence of the manager. We have clarified in Commentary that a portion of any IRC meeting without the presence of the manager will satisfy this requirement. The Commentary to section 4.6 now clarifies that we expect an IRC to keep minutes only of any material discussions it has at meetings with the manager or internally on matters subject to its review. The Instrument does not require, nor does it prevent, the IRC from sharing these minutes with the manager. We agree and have deleted this subsection. As noted, the Commentary specifies that while the Instrument does not preclude the IRC and manager from agreeing to IRC functions additional to those prescribed by the Instrument, the Instrument does not regulate those functions.
Section 4.2	*Regular Assessments*	While one commenter strongly urged us to consider requiring public disclosure of committee self-assessments, another commenter told us that individual directors tend not to	***Response*** We continue to believe that IRC self-assessments should be confidential.

		give meaningful or critical feedback of other directors unless they are assured their comments will be confidential. ***Frequency of Assessments*** One commenter also asked that we clarify 4.2 to remove any doubt about whether the IRC has a duty to consider further assessments and requirements beyond the 'minimum' assessments referred to in this section and its Commentary.	 We propose no change. An IRC is required to perform only those functions set out in the Instrument. The Commentary continues to provide that subject to the minimum requirements of the Instrument the IRC may establish a process for, and determine the frequency of, additional assessments as it sees fit.
Section 4.3	*Reporting to manager*	One commenter recommended that the words "or it suspects" be deleted as they are uncertain or vague.	***Response*** We agree, and have amended this section accordingly.
Section 4.4	*Reporting to securityholders*	One commenter remarked that as drafted, a fund complex with funds with March 31, June 30, September 30 and December 31 year ends, would require the funds' IRC to prepare four sets of annual reports, not likely the intention. Another commenter suggested that a manager should be permitted to draft its own response as to why it did not follow IRC recommendations for inclusion in the report to securityholders. This will allow for a fair and balanced perspective in reporting, we were told.	***Response*** We acknowledge that if different funds within the same fund complex possess the same IRC, but different financial year ends, an IRC may have to prepare more than one report. This outcome is no different than other financial reporting requirements for this fund complex. The Instrument does not prohibit a manager from responding in one of its disclosure documents to the IRC's report if it chooses. We continue to believe, however, that the IRC's report to securityholders should be prepared by the IRC only.

		Disclosure of membership on multiple IRCs It was also suggested by a commenter that the Instrument require disclosure of all other IRCs that each member is also a member of. Disclosure of this kind would be consistent with similar disclosure required under Form 58-101F1 *Corporate Governance Disclosure* of National Instrument 58-101 *Disclosure of Corporate Governance Practices.*	We agree with the commenter. We have revised the Instrument to mandate this disclosure in the IRC's report to securityholders.
Section 4.5	*Reporting to securities regulatory authorities*	***Materiality*** A number of commenters expressed reservations about the requirement for the IRC to report to securities regulators. Some told us to include a 'materiality' concept in the IRC's reporting obligations under this section. ***Disclosure*** One commenter asked us to specify whether or not IRC reports to securities regulators will be made public. Two other commenters asked us to redraft the section to clarify the steps an IRC must take before reporting to securities regulators. For example, one commenter queried whether the IRC should carry out a review or investigation in appropriate cases.	***Response*** We continue to believe, based upon our experience with the discretionary exemptions that we have granted to date in connection with the conflict of interest matters under subsection 5.2(1), that a materiality threshold is neither necessary nor appropriate. The Commentary provides guidance regarding our expectations on such reporting. IRC reports to securities regulators are not required to be publicly filed. We do not expect the IRC to conduct an investigation once they become aware of a breach under this section, only to report to securities regulators. The Commentary now specifies that if known, we expect the IRC to include in its report the steps the manager proposes to take or has taken to remedy the breach in each instance.

		Manager right to communicate with regulators Still other commenters told us that the section should give managers the right to communicate with securities regulators about their IRCs.	We agree that the manager should have the right to communicate with regulators about their IRCs. The Instrument does not prohibit such communications between the manager and securities regulators with respect to any matter. We have clarified this point in the Commentary.
Part 5	***Conflict of Interest Matters***		
Section 5.1	*Manager to Refer conflict of interest matters to Independent review committee*	We heard from some commenters that we should include a 'materiality' component in this section.	***Response*** We do not believe a materiality standard is necessary. The definition of a conflict of interest matter already incorporates a reasonable person test that is designed to provide some limit to the types of conflicts we expect the manager to refer to the IRC.
		One commenter noted that the process of having to seek IRC review and obtain IRC approval or recommendation could cause a manager to lose the opportunity to participate in a time-sensitive transaction.	We believe the Instrument addresses time-sensitive matters by permitting the IRC to provide the manager with standing instructions.
		One commenter remarked that this section appears to suggest the fund manager will be regularly taking unique matters to the IRC that have not been dealt with via a conflicts policy and procedure. It also appears to suggest that a fund manager would be required to take each conflict matter to the IRC before taking any action, even though it proposes to follow its policies and procedures in managing that conflict of interest.	We expect unique matters to be referred to the IRC and have revised the Commentary to clarify this view. However, we also expect the IRC will give standing instructions in many instances to facilitate timely decisions by the manager that are in the best interests of the fund.

Section 5.2	*Matters Requiring independent review committee approval*	Commenters on this section focused on the test in subsection (2). One commenter asked why securities regulators care if a manager is free from influence as required in (2)(a) or is uninfluenced as required in (2)(b) as the IRC must decide whether the manager's proposal will achieve a fair and reasonable result under (2)(d). Another commenter remarked that the IRC will be able to arrive at the first three criteria found in 5.2(2)(a)(b) and (c), as these determinations mostly concern procedure. Other commenters expressed concern with the IRC making a determination as to whether an action achieves a fair and reasonable result for the fund as required by (2)(d). ***Short Selling*** Finally, one commenter asked that we clarify whether transactions involving short-selling are captured under this section.	***Response*** We continue to believe that the conditions in subsection (2) are appropriate based upon our experience with the discretionary exemptions that we have granted to date. This section does not capture short-selling transactions in and of themselves. Short-selling transactions would be captured, however, if they are one of the conflict of interest matters cited in section 5.2(1).
Section 5.3	*Matters subject to independent review committee recommendation*	***Notice Requirements*** One commenter asked that the Instrument provide greater flexibility to the IRC on the notice which it may require under (2) and (3) of this section, for example, so that the IRC may reduce the time period if it determines that notice by press release is sufficient .	***Response*** We believe that if the IRC determines immediate notice to be appropriate, that notice should be a mailing similar to other notice requirements in securities legislation.

		This commenter also asked that we clarify that the scope of the Instrument as it relates to the 'recommendation' category of conflicts of interest for third party portfolio advisors, is the conflicts the portfolio advisor has with the manager or its affiliates. Another commenter remarked that a fund manager should not be permitted to proceed with a proposed course of action if the IRC has provided a negative recommendation, unless the manager has obtained unitholder approval, rather than only notify securityholders.	As previously noted, the Commentary has been amended to clarify our view that the Instrument captures conflicts at the portfolio manager level only in relation to decisions made on behalf of the fund that may affect of influence the manager's ability to act in good faith and in the best interests of the fund. We have also provided some examples in Commentary of potential conflict of interest matters at the portfolio manager level. We continue to be satisfied that IRC notification – whether immediate or in its report to securityholders – is an appropriate response to a manager proceeding with an action despite the negative recommendation of the IRC. The Instrument reinforces that the manager remains ultimately responsible to make decisions in the best interests of the fund.
Section 5.4	*Standing instructions by the independent review committee*	Most commenters responded positively to the ability of the IRC to issue standing instructions. Yet, we also heard from an investor advocate who expressed concern that standing instructions will in effect, become 'entrenched' relief subject to conditions that may differ across IRCs. ***'Good until cancelled'*** A few commenters remarked subsection (3)(b) does not allow a fund manager to continue to follow standing instructions during the time of the IRC's regular assessment of these standing instructions. They	***Response*** We believe that the ability of the IRC to give standing instructions appropriately provides managers with greater flexibility to make timely investment decisions that are in the best interests of the fund (and ultimately investors). The Instrument requires the IRC to review and assess the adequacy and effectiveness of standing instructions at least annually. We agree with those commenters who asked that we clarify whether a manager can continue to follow standing instructions during the time of the IRC's regular assessments under the Instrument. The section has been

		further suggested such standing instructions be good until cancelled', subject to annual review by the IRC.	revised accordingly.
		We were also asked by a commenter to mandate the posting of each standing instruction on the manager's website.	The Instrument currently mandates disclosure in the IRC's report to securityholders of a brief summary of any recommendations and approvals the manager relied upon during the period of the report. This would include any standing instructions.
		This commenter also suggested that we add as another bullet under Commentary 2, that securities regulators expect the IRC to have assessed the manager's internal control practices before providing or continuing a standing instruction.	We contemplate that a manager's policies and procedures will speak to how internal control procedures will contribute to the manager's overall ability to handle a conflict of interest. We would not generally expect, however, an IRC to assess the sufficiency of the manager's internal control procedures. Internal controls, in our view, remain the responsibility of the manager.
		Use of prior exemptive relief orders as guidance Finally, one commenter told us that if it is our intent that prior orders granted by securities regulators can be used by an IRC for guidance, that intent should be clarified in Commentary 2.	The Commentary specifies that an IRC may consider as guidance the conditions in past exemptive relief orders in considering what, if any, parameters to impose in a standing instruction. It remains the responsibility of the IRC to provide standing instructions based upon the particular circumstances.
Part 6	**Exempted Transactions**		
Section 6.1	*Inter-fund trades*	One commenter, while supportive of the inter-fund trading exemptions, reiterated	***Response*** As previously stated, we believe the inter-fund trading exemption in the Instrument represents the

		their comments from the 2004 Proposal that we adopt the U.S. model for inter-fund trading and not attempt to "reinvent the wheel".	minimum requirements necessary to mitigate the conflict of interest concerns inherent in such transactions and satisfies the capital market objectives of market integrity.
		Another commenter reiterated their remarks from the 2004 Proposal that the inter-fund trading provisions are overly-prescriptive, 'unnecessary', and do not adequately consider a manager's fiduciary obligations and the need for IRC input.	We direct these commenters to our earlier responses published with the 2005 Proposal.
		These commenters both remarked that the inter-fund trading exemption should extend beyond funds subject to the Instrument to permit a broader universe of potential counterparties, which at the very least, should include U.S. mutual funds.	Our comfort with the inter-fund trade exemption in the Instrument stems from the protection we believe is afforded to the securityholders by its conditions, including the review and approval by the IRC. Accordingly, we continue to believe that only investment funds subject to the Instrument should be permitted to inter-fund trade under this provision.
		Another commenter suggested we replace the word 'contrepartie' with the word 'compensation' in section 6.1 of the French version of the Instrument.	On review, we propose no change to this section of the French version of the Instrument.
		One commenter remarked that section 6.1(1)(d) does not appear to permit processing costs as part of the cost of an inter-fund trade, and requested clarification in this regard.	We consider processing costs to be included in the reference to nominal costs incurred by the investment fund to print or display the trade in this section.

		Another commenter told us they considered the discussion in Commentary 4 on 1(c) conflicts with (e)(ii), in that section 6.1(1)(c) permits use of a single pricing source if only one is available, whereas section 6.1(1)(e)(ii) requires use of more than one pricing source to arrive at certain average prices.	We disagree with this commenter. The Commentary in 1(c) provides guidance on how we expect transparency of market price to be obtained, whereas (e)(ii) focuses on how the current market price is determined for non-exchange traded securities.
Section 6.2	*Transactions in securities of related issuers*	A few commenters told us that the 'mutual fund conflict of interest restrictions' are much broader than related party investments, and therefore should extend to any investments prohibited under the 'mutual fund conflict of interest investment restrictions". Without this change, we were told, 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.	***Response*** The exemption provided in the Instrument is based upon the recurring applications for discretionary exemptions that we have granted. We acknowledge that a fund manager may still need to apply for discretionary exemptions in connection with other transactions not exempted by this provision in the Instrument. We have amended the Commentary to articulate our view that if an IRC gives its approval for the fund to purchase securities under this section, and then subsequently withdraws its approval for additional purchases, we will not consider the continued holding of such securities to be subject to subsection 1.2(b) of the Instrument. We do, however, expect the manager to consider whether continuing to hold those securities is a conflict of interest matter that subsection 1.2(a) of the Instrument would require the manager to refer to the IRC.
		One of these commenters suggested that the Instrument be revised to state that if the IRC has approved a transaction, no reports under section 117 of the *Securities Act* (Ontario) and	We believe that the reports required under section 117 still provide meaningful information not otherwise required under the reporting obligations of the Instrument. The requirement to

		similar provisions in other provinces, need to be filed.	comply with this reporting is consistent with the discretionary exemptions we have granted to date.
		This commenter also asked that we clarify whether regulatory approval is required for non-exchange traded derivative transactions (such as forwards) notwithstanding IRC approval.	We do not consider non-exchange traded derivative transactions to be captured in section 6.2.
		Another commenter recommended the disclosure of the particulars of the investment required by subsection 6.2(1)(c) be included in either the financial statements or the MRFP required by NI 81-106, and should not be a separate filing.	We continue to believe this disclosure should be filed on SEDAR. Accordingly, no change to the Instrument has been made.
Part 7	**Exemptions**		
Section 7.2	*Existing exemptions, waivers or approvals*	One commenter reiterated their comment from the 2004 Proposal, asking that we provide guidance in the Commentary that a fund manager may in fact stop relying on an order and consider itself no longer subject to the conditions to the order, once it has established an IRC and the IRC and the manager have agreed on a written charter. Another commenter remarked that previously granted exemptions, waivers, and approvals should not be revoked by the Instrument, as this could lead to unnecessary repetition of notices to securityholders, prospectus amendments, and related fees and expenses.	***Response*** We have revised this section to provide greater clarity that all exemptions, waivers or approvals that deal with the matters the Instrument regulates – not just those that deal with matters under subsection 5.2(1) - will expire one year after the Instrument comes into force.

Part 8	**Effective Date**		
Section 8.2	*Transition*	A few commenters told us that new funds may confront the same issues as existing funds in meeting the requirements of the Instrument. These commenters submitted we extend the transitional relief set out in section 8.2 to new funds for a reasonable start-up period.	***Response*** We agree with these commenters and have revised the Instrument to provide the same transition period to new funds. We have also revised the transition period to the earlier of the date the manager notifies securities regulators it is complying with the Instrument and one year after the Instrument comes into force.
		One commenter recommended that we delete subsection 8.2(4), questioning the purpose of this notification from a regulatory perspective.	We believe that notification by managers who intend to rely on the Instrument prior to the expiry of the transition period is appropriate. This will assist securities regulators in monitoring compliance with the Instrument.
		Some commenters asked for more guidance on the extent to which an IRC must revisit decisions and policies and procedures on conflict matters made prior to the formation of the IRC and prior to the implementation of the Instrument.	For a fund established before the Instrument comes into force, we do not expect an IRC to revisit decisions made prior to the formation of the IRC. The Commentary has been revised to clarify that we expect the manager to establish policies and procedures on any ongoing conflict of interest matters, and to refer to the IRC these policies and procedures and any new decisions related to such matters. We have also added to the Commentary that we do not consider a manager's initial decision-making in the organization of the fund to be subject to IRC review, unless the manager's decisions give rise to a conflict of interest concerning the manager's obligations to existing investment funds within the manager's fund family. However, we anticipate that the

		Disclosure One commenter told us there should be a clear transition for disclosure obligations and mutual funds should not be expected to file an amendment to offering documents.	manager will wish to engage the IRC early in the establishment of the fund to ensure the IRC is adequately informed of potential new conflicts of interest. We have revised the Commentary to clarify our expectation that funds can incorporate any new disclosure obligations or changes arising out of the Instrument as part of their annual prospectus renewal filing or continuous disclosure filing.
Proposed Amendments to NI 81-101		We heard from two commenters who remarked that there is no added value to investors in breaking out and disclosing the individual compensation paid to IRC members required by new section 15(2) of Form 81-101F2. One of these commenters queried why this form requirement is only included in the mutual fund prospectus form (including the prospectus for a commodity pool) and not for other types of investment funds, and strongly recommended that proposed new subsection 15(2) be deleted.	***Response*** The disclosure relating to IRC members in section 15(2) of the Form is consistent with the disclosure required under this section for directors of a mutual fund. Accordingly, we propose no change.
Proposed Amendments to NI 81-102		While industry commenters told us that the conditions found in our consequential amendments to section 4.1 of NI 81-102 *Mutual Funds* appropriately reflected the terms and conditions of exemptive relief granted in the past, a few commenters asked us to clarify certain parts of the amendments. Some commenters asked whether we intended the requirement to purchase	***Response*** We have revised the exemption in section 4.1 of NI 81-102 to specify that only purchases made during the 60 days after the end of the distribution period must be made on an exchange.

		securities on a stock exchange to apply during the distribution period, the 60-day period following same, or both.	
		One commenter noted that we have granted discretionary exemptions in the past to permit purchases under private placements. Another commenter remarked that the consequential amendments to NI 81-102 do not address non-exchange traded derivative transactions.	We have limited the exemption in section 4.1 to the most frequently occurring transactions from which we have granted discretionary relief to date. We will to continue to deal with other types of transactions on a discretionary basis. We have also included a new Appendix C to the Instrument to specifically list the provisions in the regulations of the CSA that are also exempted if investments are made in accordance with new subsection 4.1(4) of NI 81-102.
		We were also asked by a commenter to amend the wording of proposed 4.1(4)(d) and 4.2(3)(d) in the French version of the Instrument.	We agree with the commenter and have added the word 'ainsi' after 'placement' in the French version of the Instrument.
		One commenter suggested the revisions to Part 5 should indicate that non-management fees are to be approved by the IRC, and not by securityholders. Also, there should be a clear distinction between third party fees and other operating expenses.	We note that section 5.3(1) (a) of NI 81-102 specifically excludes third party fees from a securityholder vote. We continue to believe that a securityholder should have the right to vote for changes to fees caught by section 5.1 of the Instrument.
		One commenter also suggested the consequential amendment adding section 5.3 to NI 81-102 should also reference paragraph 5.1(g) in addition to paragraph 5.1(f).	We have chosen not to make this change. We believe that securityholders of the continuing fund should have the right to vote on a material change to their fund, resulting from a reorganization or merger.

		Change of Auditor Finally, one commenter did not see why the right to select an auditor or change an auditor is being delegated to the IRC. This commenter told us that it is best practice to have fund auditors at arms length from the manager or its parent.	We believe a change of auditor to be a matter that can be appropriately reviewed by an IRC.
		Companion Policy to NI 81-102 – Section 3.8(2) Another commenter remarked that it is inappropriate to provide, as set out in Commentary, that the IRC may satisfy itself that the price of the security is fair by obtaining at least one price quote from an independent, arms length purchaser or seller, immediately before the purchase or sale. We were told that a fund manager's policies and procedures would be expected to address the issue of obtaining price quotes in connection with the purchase or sale of securities.	The Commentary is intended only as guidance to the IRC on what to look for in judging whether the manager has achieved a fair price for the security under section 4.2(3).
Proposed OSC Rule 81-802		For greater certainty, one commenter suggested that rather than specifying in detail the sections to which a manager or investment fund or portfolio manager is exempt (as set out in sections 3.4 and 3.5), the Instrument should specify that these entities are exempt from sections 111 to 118 inclusive of the *Securities Act* (Ontario) (the "Act") to the extent that the IRC has approved a particular action that would otherwise be prohibited or restricted by these sections.	***Response*** The recent legislative changes to the Act now specifies in section 121.1 that, a prohibition under Part XXI (Insider Trading and Self-Dealing) does not apply to a transaction approved by an independent body, if the regulations or rules provide for this approval. OSC Rule 81-802 has been amended accordingly.

SUMMARY OF PUBLIC COMMENTS ON PROPOSED NATIONAL INSTRUMENT 81-107 AND COMMENTARY

List of Commenters

AGF Funds Inc.
AIM Trimark Investments
Association of Canadian Pension Management
Barclays Global Investors Canada Limited
BMO Mutual Funds
Board of Governors of the RBC Funds and RBC Private Pools
Borden Ladner Gervais LLP
Brandes Investment Partners & Co.
Canadian Bankers Association
Canadian Imperial Bank of Commerce
Chou Associates Management Inc.
CIBC Independent Review Committee
Conseil des fonds d'investissement du Québec (CFIQ)
Desjardins Fédération des caisses du Québec
Fidelity Investments Canada Limited
Frank Russell Canada Limited
Franklin Templeton Investments Corp.
Fraser Milner Casgrain LLP
Frank Santangeli
GrowthWorks
Guardian Group of Funds
IGM Financial Inc.
Independent Review Inc.
Investment Funds Institute of Canada
International Scholarship Foundation/USC Education Savings Plan Inc.
Leith Wheeler Investment Counsel Ltd.
PFSL Investments Canada Ltd.
RBC Financial Group
Resolute Funds Limited
Small Investor Protection Association ("SIPA")
Simon Romano
SEI Investments Canada Company
TD Asset Management Inc.
Toronto Stock Exchange
Tradex Management Inc. ("TMI")
Westcap Management Limited

APPENDIX C

NATIONAL INSTRUMENT 81-101
MUTUAL FUND PROSPECTUS DISCLOSURE,
FORM 81-101F1 CONTENTS OF SIMPLIFIED PROSPECTUS AND
FORM 81-101F2 CONTENTS OF ANNUAL INFORMATION FORM
AMENDMENT INSTRUMENT

1. Section 1.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* is amended by:

(a) adding the following after the definition of "financial year":

"independent review committee" means the independent review committee of the investment fund established under National Instrument 81-107 *Independent Review Committee for Investment Funds*;"; and

(b) adding the following after the definition of "multiple SP":

"NI 81-107" means National Instrument 81-107 *Independent Review Committee for Investment Funds*;".

2. Form 81-101F1 *Contents of Simplified Prospectus* is amended

(a) in Item 5 of Part A by:

(i) adding the following after subsection (3):

"(3.1) Under a separate sub-heading "Independent Review Committee" in the diagram or table, briefly describe the independent review committee of the mutual funds, including

- an appropriate summary of its mandate,

- its composition, that it prepares at least annually a report of its activities for securityholders which is available on the [mutual fund's/mutual fund family's] Internet site at [insert mutual fund's Internet site address], or at the securityholders request at no cost, by contacting the [mutual fund/mutual fund family] at [insert mutual fund's /mutual fund family's e-mail address], and

- that additional information about the independent review committee, including the names of the members, is available in the mutual fund's Annual Information Form.";

(ii) adding the following after subsection (5):

"(6) Despite subsection (3.1), if the information required by subsection (3.1) is not the same for substantially all of the mutual funds described in the document, provide only that information that is the same for substantially all of the mutual funds and provide the remaining disclosure required by that subsection under Item 4(3.1) of Part B of this Form."; and

(iii) adding the following Instruction after Instruction (2):

"(3) *The information about the independent review committee should be brief. For instance, its mandate may in part be described as "reviewing, and providing input on, the manager's written policies and procedures which deal with conflict of interest matters for the manager and reviewing such conflict of interest matters." A cross-reference to the annual information form for additional information on the independent review committee and fund governance should be included."*.

(b) in Item 8 of Part A by

(i) adding the following after subsection 8.1(3) :

"(3.1) Under "Operating Expenses" in the table, include a description of the fees and expenses payable in connection with the independent review committee."; and

(ii) adding the following after subsection 8.1(5):

"(6) Despite subsection (3.1), if the information required by subsection (3.1) is not the same for each mutual fund described in the document, make this disclosure in the description of fees and expenses required for each fund by Item 5 of Part B of this Form and include a cross-reference to that information in the table required by this Item.".

(c) in Item 4 of Part B by adding the following after subsection (3):

"(3.1) Under a separate sub-heading "Independent Review Committee" in the diagram or table, briefly describe the independent review committee of the mutual funds, including

- an appropriate summary of its mandate,
- its composition,
- that it prepares at least annually a report of its activities for securityholders which is available on the [mutual fund's/mutual fund family's] Internet site at [insert mutual fund's Internet site address], or at securityholders request at no cost, by contacting the [mutual fund/mutual fund family] at [insert mutual fund's /mutual fund family's e-mail address], and

- that additional information about the independent review committee, including the names of the members, is available in the mutual fund's Annual Information Form.".

(d) in Item 5 of Part B by adding the following after subparagraph (f)(ii):

"(iii) the amount of the fees and expenses payable in connection with the independent review committee, charged to the mutual fund; and".

3. Form 81-101F2 *Contents of Annual Information Form* is amended

(a) in Item 4 by adding the following after subsection (2):

"(2.1) If the mutual fund has relied on the approval of the independent review committee and the relevant requirements of NI 81-107 to vary any of the investment restrictions and practices contained in securities legislation, including NI 81-102, provide details of the permitted variations.

(2.2) If the mutual fund has relied on the approval of the independent review committee to implement a reorganization with, or transfer of assets to, another mutual fund or to proceed with a change of auditor of the mutual fund as permitted by NI 81-102, provide details.".

(b) in Item 10 by:

(i) striking out “”and” at the end of paragraph 10.1(f);

(ii) adding “;and” at the end of paragraph 10.1(g); and

(iii) adding the following after paragraph 10.1(g):

"(h) the oversight of the manager of the mutual fund by the independent review committee.".

(c) in Item 11 by adding the following after subsection 11.1(5):

"(6) Disclose the percentage of securities of each class or series of voting or equity securities beneficially owned, directly or indirectly, in aggregate, by all the independent review committee members of the mutual fund

(a) in the mutual fund if the aggregate level of ownership exceeds 10 percent,

(b) in the manager, or

(c) in any person or company that provides services to the mutual fund or the manager.".

(d) in Item 12

(i) by repealing paragraph (1)(a) and substituting the following:

"(a) the mandate and responsibilities of the independent review committee and the reasons for any change in the composition of the independent review committee since the date of the most recently filed annual information form;

(a.1) any other body or group that has responsibility for fund governance and the extent to which its members are independent of the manager of the mutual fund; and"; and

(ii) by renumbering the Instruction as Instruction (1) and adding the following paragraph after Instruction (1):

"*(2) If the mutual fund has an independent review committee, state in the disclosure provided under paragraph (1)(b) that NI 81-107 requires the manager to have policies and procedures relating to conflicts of interest.*".

(e) in Item 15 by repealing subsection (2) and substituting the following:

"(2) Describe any arrangements under which compensation was paid or payable by the mutual fund during the most recently completed financial year of the mutual fund, for the services of directors of the mutual fund, members of an independent board of governors or advisory board of the mutual fund and members of the independent review committee of the mutual fund, including the amounts paid, the name of the individual and any expenses reimbursed by the mutual fund to the individual

(a) in that capacity, including any additional amounts payable for committee participation or special assignments; and

(b) as consultant or expert."

4. This Instrument comes into force on November 1, 2006.

APPENDIX D
NATIONAL INSTRUMENT 81-102
MUTUAL FUNDS
AMENDMENT INSTRUMENT

1. The Table of Contents of National Instrument 81-102 *Mutual Funds* is amended by adding the following after Appendix B-1, Appendix B-2 and Appendix B-3 – Compliance Reports:

   "APPENDIX C –Provisions contained in Securities Legislation for the Purpose of Subsection 4.1(5) – Prohibited Investments".

2. Section 1.1 of National Instrument 81-102 *Mutual Funds* is amended by:

   (a) adding the following after the definition of "illiquid asset":

   " "independent review committee" means the independent review committee of the investment fund established under National Instrument 81-107 *Independent Review Committee for Investment Funds*";

   (b) repealing the definition of "mutual fund conflict of interest investment restrictions" and substituting the following:

   " "mutual fund conflict of interest investment restrictions" means the provisions of securities legislation that

   (a) prohibit a mutual fund from knowingly making or holding an investment in any person or company who is a substantial security holder, as defined in securities legislation, of the mutual fund, its management company, manager or distribution company;

   (b) prohibit a mutual fund from knowingly making or holding an investment in any person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder, as defined in securities legislation;

   (c) prohibit a mutual fund from knowingly making or holding an investment in an issuer in which any person or company who is a substantial security holder of the mutual fund, its management company, manager or distribution company, has a significant interest, as defined in securities legislation;

   (d) prohibit a mutual fund, a responsible person as defined in securities legislation, a portfolio adviser or a registered person acting under a management contract from knowingly causing any investment portfolio managed by it, or a mutual fund, to invest in, or prohibit a mutual fund from investing in, any issuer in which a responsible person, as defined in securities legislation, is an officer or director unless the specific fact is disclosed to the mutual fund, securityholder or client, and where securities legislation requires it, the written consent of the client to the investment is obtained before the purchase;

(e) prohibit a mutual fund, a responsible person as defined in securities legislation, or a portfolio adviser knowingly causing any investment portfolio managed by it to purchase or sell, or prohibit a mutual fund from purchasing or selling, the securities of any issuer from or to the account of a responsible person, as defined in securities legislation, an associate of a responsible person or the portfolio adviser; and

(f) prohibit a portfolio adviser or a registered person acting under a management contract from subscribing to or buying securities on behalf of a mutual fund, where his or her own interest might distort his or her judgment, unless the specific fact is disclosed to the client and the written consent of the client to the investment is obtained before the subscription or purchase."; and

(c) adding the following after the definition of "mutual fund conflict of interest reporting requirements":

""NI 81-107" means National Instrument 81-107 *Independent Review Committee for Investment Funds*.".

3. Section 4.1 of National Instrument 81-102 *Mutual Funds* is amended by adding the following after subsection (3):

"(4) Subsection (1) does not apply to an investment in a class of securities of an issuer if, at the time of each investment

(a) the independent review committee of the dealer managed mutual fund has approved the transaction under subsection 5.2(2) of NI 81-107;

(b) in a class of debt securities of an issuer other than a class of securities referred to in subsection (3), the security has been given, and continues to have, an approved rating by an approved credit rating organization;

(c) in any other class of securities of an issuer,

(i) the distribution of the class of equity securities is made by prospectus filed with one or more securities regulatory authorities or regulators in Canada, and

(ii) during the 60 day period referred to in subsection (1) the investment is made on an exchange on which the class of equity securities of the issuer is listed and traded; and

(d) no later than the time the dealer managed mutual fund files its annual financial statements, the manager of the dealer managed mutual fund files the particulars of each investment made by the dealer managed mutual fund during its most recently completed financial year.

(5) The corresponding provisions contained in securities legislation referred to in Appendix C do not apply with respect to an investment in a class of securities of an issuer referred to in subsection (4) if the investment is made in accordance with that subsection.".

4. Section 4.3 of National Instrument 81-102 *Mutual Funds* is amended by

(a) renumbering 4.3 Exception as subsection (1); and

(b) adding the following after subsection (1):

"(2) Section 4.2 does not apply to a purchase or sale of a class of debt securities by a mutual fund from, or to, another mutual fund managed by the same manager or an affiliate of the manager, if, at the time of the transaction

(a) the mutual fund is purchasing from, or selling to, another mutual fund to which NI 81-107 applies;

(b) the independent review committee of the mutual fund has approved the transaction under subsection 5.2(2) of NI 81-107; and

(c) the transaction complies with subsection 6.1(2) of NI 81-107.".

5. Section 5.1 of National Instrument 81-102 *Mutual Funds* is amended by repealing paragraph 5.1(d).

6. Section 5.3 of National Instrument 81-102 *Mutual Funds* is amended

(a) by adding the following after subsection 5.3(1):

"(2) Despite section 5.1, the approval of securityholders of a mutual fund is not required to be obtained for a change referred to in paragraph 5.1(f) if

(a) the independent review committee of the mutual fund has approved the change under subsection 5.2(2) of NI 81-107;

(b) the mutual fund is being reorganized with, or its assets are being transferred to, another mutual fund to which this Instrument and NI 81-107 apply and that is managed by the manager, or an affiliate of the manager, of the mutual fund;

(c) the reorganization or transfer of assets of the mutual fund complies with the criteria in paragraphs 5.6(1)(a), (b), (c), (d), (g), (h) and (i) and subsection 5.6(2);

(d) the simplified prospectus of the mutual fund discloses that, although the approval of securityholders may not be obtained before making the change, securityholders will be sent a written notice at least 60 days before the effective date of the change; and

(e) the notice referred to in paragraph (d) to securityholders is sent 60 days before the effective date of the change."; and

(b) by adding the following after section 5.3:

"5.3.1 Change of Auditor of the Mutual Fund –The auditor of the mutual fund may not be changed unless

(a) the independent review committee of the mutual fund has approved the change of auditor under subsection 5.2(2) of NI 81-107;

(b) the simplified prospectus of the mutual fund discloses that, although the approval of securityholders will not be obtained before making the change, securityholders will be sent a written notice at least 60 days before the effective date of the change, and

(c) the notice referred to in paragraph (b) to securityholders is sent 60 days before the effective date of the change.".

7. National Instrument 81-102 *Mutual Funds* is amended by adding the following after Appendix B-3 – AUDIT REPORT:

"APPENDIX C – PROVISIONS CONTAINED IN SECURITIES LEGISLATION FOR THE PURPOSE OF SUBSECTION 4.1(5) – PROHIBITED INVESTMENTS

JURISDICTION	SECURITIES LEGISLATION REFERENCE
Alberta	s. 9 of ASC Policy 7.1
British Columbia	s. 81 of the *Securities Rules* (British Columbia)
Newfoundland and Labrador	s. 191 of Reg 805/96
New Brunswick	s. 13.2 of Local Rule 31-501 Registration Requirements
Nova Scotia	s. 67 of the General Securities Rules

Ontario	s. 227 of Reg. 1015
Quebec	Article 236 and 237.1 of the *Securities Regulation*

8. This Instrument comes into force on November 1, 2006.

COMPANION POLICY 81-102CP - TO NATIONAL INSTRUMENT 81-102 MUTUAL FUNDS AMENDMENT INSTRUMENT

1. Section 3.4 of Companion Policy 81-102CP *Mutual Funds* is amended by adding the following paragraph after subsection (1):

   "(2) Subsection 2.5(7) of the Instrument provides that certain investment restrictions do not apply to investments in other mutual funds made in accordance with section 2.5. For greater certainty, the CSA note that subsection 2.5(7) applies only with respect to a mutual fund's investments in other mutual funds, and not for any other investment or transaction."; and

2. Part 3 of Companion Policy 81-102CP *Mutual Funds* is amended by adding the following after section 3.7:

   "3.8 Prohibited Investments – (1) Subsection 4.1(4) permits a dealer managed mutual fund to make an investment otherwise prohibited by subsection 4.1(1) and the corresponding provisions in securities legislation referred to in Appendix C to NI 81-102 if the independent review committee of the dealer managed mutual fund has approved the transaction under subsection 5.2(2) of NI 81-107. The CSA expect the independent review committee may contemplate giving its approval as a standing instruction, as contemplated in section 5.4 of NI 81-107.

   (2) Subsection 4.3(2) permits a mutual fund to purchase a class of debt securities from, or sell a class of debt securities to, another mutual fund managed by the same manager or an affiliate of the manager where the price payable for the security is not publicly available, if the independent review committee of the mutual fund has approved the transaction under subsection 5.2(2) of NI 81-107 and the requirements in section 6.1 of NI 81-107 have been met. The CSA expect the independent review committee may contemplate giving its approval as a standing instruction, as contemplated in section 5.4 of NI 81-107.

   (3) In providing its approval under paragraph 4.3(2), the CSA expect the independent review committee to have satisfied itself that the price of the security is fair. It may do this by considering the price quoted on a marketplace (e.g., CanPx or TRACE), or by obtaining a quote from an independent, arm's-length purchaser or seller, immediately before the purchase or sale.".

3. Part 7 of Companion Policy 81-102CP Mutual Funds is amended by adding the following after section 7.4:

   "7.5 Circumstances in Which Approval of Securityholders Not Required – (1) Subsection 5.3(2) of the Instrument provides that a mutual fund's reorganization with, or transfer of assets to, another mutual fund may be carried out on the conditions described in the subsection without the prior approval of the securityholders of the mutual fund.

   (2) If the manager refers the change contemplated in subsection 5.3(2) to the mutual fund's independent review committee, and subsequently seeks the approval of the securityholders of the mutual fund, the CSA expect the manager to include a description of the independent review

committee’s determination in the written notice to securityholders referred to in section 5.4 of this Instrument.

7.6 Change of Auditor –Section 5.3.1 of the Instrument requires that the independent review committee of the mutual fund give its prior approval to the manager before the auditor of the mutual fund may be changed.

7.7 Connection to NI 81-107 – There may be matters under section 5.1 that may also be a conflict of interest matter as defined in NI 81-107. The CSA expect any matter under section 5.1 subject to review by the independent review committee to be referred by the manager to the independent review committee before seeking the approval of securityholders of the mutual fund. The CSA further expect the manager to include a description of the independent review committee’s determination in the written notice to securityholders referred to in subsection 5.4(2) of this Instrument.”.

4. This Instrument comes into force on November 1, 2006.

APPENDIX E

NATIONAL INSTRUMENT 81-106 INVESTMENT FUND CONTINUOUS DISCLOSURE AND FORM 81-106F1 CONTENTS OF ANNUAL AND INTERIM MANAGEMENT REPORT OF FUND PERFORMANCE AMENDMENT INSTRUMENT

1. Section 1.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure* is amended by

   (a) adding the following after the definition of "EVCC"":

   "independent review committee" means the independent review committee of the investment fund established under National Instrument 81-107 *Independent Review Committee for Investment Funds*;"; and

   (b) adding the following after the definition of "National Instrument 51-102":

   "National Instrument 81-107" means National Instrument 81-107 *Independent Review Committee for Investment Funds*;".

2. Section 1.3 of National Instrument 81-106 *Investment Fund Continuous Disclosure* is amended by striking out "Multilateral Instrument 81-104" and substituting "National Instrument 81-104".

3. Section 3.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure* is amended by adding the following after item 8:

   "8.1. independent review committee fees. "

4. Section 9.4 of National Instrument 81-106 *Investment Fund Continuous Disclosure* is amended by repealing paragraph (2)(f) and substituting the following:

   "(f) Item 15 of Form 81-101F2 does not apply to an investment fund that is a corporation, except for the disclosure in connection with the independent review committee; and".

5. Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performanc*e is amended

   (a) in section 2.4 by

      (i) striking out "and" at the end of paragraph (d);

      (ii) adding ";and" at the end of paragraph (e);

      (iii) adding the following after paragraph (e):

"(f) changes to the composition or members of the independent review committee of the investment fund. "; and

(b) in section 2.5 by adding the following Instruction after Instruction (3):

"*(4) If the investment fund has an independent review committee, state whether the investment fund has relied on the positive recommendation or approval of the independent review committee to proceed with the transaction, and provide details of any conditions or parameters surrounding the transaction imposed by the independent review committee in its positive recommendation or approval.*

6. This Instrument comes into force on November 1, 2006.

APPENDIX F

NATIONAL INSTRUMENT 13-101
SYSTEM FOR ELECTRONIC DOCUMENT ANALYSIS AND RETRIEVAL (SEDAR)
AMENDMENT INSTRUMENT

1. Appendix A – Mandated Electronic Filings of National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR) is amended by

   (a) adding the following after Item 17 of part I B.:

   "18. Report by Independent Review Committee"

   19. Manager - transactions in securities of related issuers

   20. Manager - transactions under Part 4 of NI 81-102

   21. Manager - notification under Part 5 of NI 81-107"; and

   (b) adding the following after Item 18 of part II B.(a):

   "19. Report by Independent Review Committee"

   20. Manager - transactions in securities of related issuers

   21. Manager - transactions under Part 4 of NI 81-102

   22. Manager - notification under Part 5 of NI 81-107".

2. This Instrument comes into force on November 1, 2006.

APPENDIX G
NATIONAL INSTRUMENT 81-104
COMMODITY POOLS
AMENDMENT INSTRUMENT

1. Section 1.1 of National Instrument 81-104 *Commodity Pools* is amended by adding the following after the definition "Derivatives Fundamentals Course":

   "independent review committee" means the independent review committee of the investment fund established under National Instrument 81-107 *Independent Review Committee for Investment Funds*;".

2. Section 9.2 of National Instrument 81-104 *Commodity Pools* is amended by adding the following after subsection 9.2(o):

   "(p) provide the disclosure concerning the independent review committee of the commodity pool that is required to be provided by a mutual fund under

   (i) subsection (3.1) of Item 5 of Part A of Form 81-101F1 Contents of Simplified Prospectus,

   (ii) subsection (3.1) of Item 8 of Part A of Form 81-101F1 Contents of Simplified Prospectus,

   (iii) subsections (2.1) and (2.2) of Item 4 of Form 81-101F2 Contents of Annual Information Form,

   (iv) paragraph (h) of Item 10.1 of Form 81-101F2 Contents of Annual Information Form,

   (v) subsection (6) of Item 11.1 of Form 81-101F2 Contents of Annual Information Form,

   (vi) subsection (1) of Item 12 Form 81-101F2 Contents of Annual Information Form, and

   (vii) subsection (2) of Item 15 of Form 81-101F2 Contents of Annual Information Form in connection with the independent review committee."

3. This Instrument comes into force on November 1, 2006.

APPENDIX H
RELATED AMENDMENTS TO ONTARIO SECURITIES REGULATION, ONTARIO SECURITIES COMMISSION RULE AND ADDITIONAL INFORMATION REQUIRED IN ONTARIO

This Appendix:

- contains amendments to Ontario Securities Commission Rule 41-501 – *General Prospectus Requirements*;
- contains changes to Ontario Regulation 1015 (the Regulation); and
- lists the authority in the *Securities Act* (Ontario) (the Act) which permits the Ontario Securities Commission (the Commission) to adopt the proposed Instrument.

The Commission is also publishing Ontario Securities Commission Rule 81-802 – *Implementing National Instrument 81-107 Independent Review Committee for Investment Funds*.

Amendment to Ontario Securities Commission Rule 41-501 – *General Prospectus Requirements*

1. Ontario Securities Commission Rule 41-501 - *General Prospectus Requirements* is amended by this Instrument.

2. Section 2.1 is amended

   (a) by adding the following after the definition of "income from continuing operations":

   "independent review committee" means the independent review committee of the investment fund established under National Instrument 81-107 *Independent Review Committee for Investment Funds*;"; and

   (b) by adding the following after the definition of "junior issuer":

   "NI 81-107" means National Instrument 81-107 *Independent Review Committee for Investment Funds*;".

3. Form 41-501F1 I*nformation Required in a Prospectus* is amended

   (a) in the Table of Contents by adding the following after Item 33 Certificates:

   "ITEM 34 INDEPENDENT REVIEW COMMITTEE

   34.1 Independent Review Committee"; and

(b) by adding the following after Item 33:

"**Item 34 – Independent Review Committee**

34.1 – Independent Review Committee

For an investment fund, disclose a description of the independent review committee, including

(a) an appropriate summary of its mandate;

(b) its composition;

(c) that it prepares a report at least annually of its activities for securityholders which is available on the [investment fund's/investment fund family's] Internet site at [insert investment fund's Internet site address], or at the securityholders request at no cost, by contacting the [investment fund/investment fund family] at [insert investment fund's /investment fund family's e-mail address];

(d) that additional information about the independent review committee, including the names of the members, is available in the investment fund's annual information form; and

(e) the amount of fees and expenses payable in connection with the independent review committee paid by the investment fund, including whether the investment fund pays all of the fees payable to the independent review committee and listing the main components of the fees.".

4. Schedule 1 to Form 41-501F2 Personal Information to Form 41-502F2 Authorization of Indirect Collection of Personal Information [Name of Issuer] is amended by striking out the title and substituting the following:

"Schedule 1 – Personal Information to Form 41-501F2 Authorization of Indirect Collection of Personal Information [Name of Issuer]".

5. This Instrument comes into force on November 1, 2006.

<u>Provisions of Regulation to be Amended</u>

Concurrently with making National Instrument 81-107 *Independent Review Committee for Investment Funds* (the Instrument) and Ontario Securities Commission Rule 81-802 – *Implementing National Instrument 81-107 Independent Review Committee for Investment Funds* (OSC Rule 81-102), the Commission has made a regulation that amends some provisions of the Regulation made under the Act (R.R.O. 1990, Reg. 1015, as am.). This regulation is necessary or advisable to effectively implement the Instrument and OSC Rule 81-802. The regulation is subject to the approval of the Minister of Government Services.

This regulation makes the following amendments to the Regulation:

1. Section 115 is amended by adding the following after subsection (6):

   "(7) Subsection (6) does not apply in the case of an investment counsel who is acting as a portfolio manager of an investment fund, with respect to a purchase or sale of a security referred to in subsection 6.1(2) of National Instrument 81-107 *Independent Review Committee for Investment Funds* if the purchase or sale is made in accordance with that subsection.".

2. Subsection 227(2) is amended by

   (a) striking out "or" at the end of clause (b); and

   (b) adding the following clause after (b):

   "(b.1) in the case of a registrant who is acting as a portfolio manager in respect of a transaction made in accordance with subsection 4.1(4) of National Instrument 81-102 *Mutual Funds*; or".

3. Form 15 – *Information Required in Prospectus of a Mutual Fund* is amended by adding the following after Item 28 Other Material Facts:

   "**Item 29 – Independent Review Committee:**

   Disclose a description of the independent review committee of the mutual fund established under National Instrument 81-107 *Independent Review Committee for Investment Funds*, including

   (a) an appropriate summary of its mandate;

   (b) its composition;

   (c) that it prepares a report at least annually of its activities for securityholders which is available on the [mutual fund's/mutual fund family's] Internet site at [insert mutual fund's Internet site address], or at the securityholders request, at no cost, by contacting the [mutual fund/mutual fund family] at [insert mutual fund's /mutual fund family's e-mail address]; and

   (d) the amount of fees and expenses payable in connection with the independent review committee paid by the mutual fund, including whether the mutual fund pays all of the fees payable to the independent review committee and listing the main components of the fees.".

4. Form 45 – *Information Required to be Included in Prospectus of a Labour Sponsored Investment Fund Corporation* is amended by adding the following after Item 25 Certificate:

"**Item 26 – Independent Review Committee**

Disclose a description of the independent review committee of the Fund established under National Instrument 81-107 *Independent Review Committee for Investment Funds*, including

(a) an appropriate summary of its mandate;

(b) its composition;

(c) that it prepares a report at least annually of its activities for securityholders which is available on the [Fund's/Fund family's] Internet site at [insert Fund's Internet site address], or at the securityholders request, at no cost, by contacting the [Fund/Fund family] at [insert Fund's /Fund family's e-mail address]; and

(d) the amount of fees and expenses payable in connection with the independent review committee paid by the Fund, including whether the Fund pays all of the fees payable to the independent review committee and listing the main components of the fees.".

If approved by the Minister, the regulation will come into force on the day that National Instrument 81-107 comes into force.

Authority for the Rule

The following provisions of the Act provide the Commission with authority to adopt the proposed Instrument:

Paragraph 143(1)5 of the Act authorizes the Commission to make rules "prescribing requirements in respect of notification by a registrant or other person or company in respect of a proposed change in beneficial ownership of, or control or direction over, securities of the registrant and authorizing the Commission to make an order that a proposed change may not be effected before a decision by the Commission as to whether it will exercise its powers under paragraph 1 of subsection 127(1) as a result of the proposed change".

Paragraph 143(1)10 of the Act authorizes the Commission to make rules "prescribing requirements in respect of the books, records and other documents required by subsection 19(1) of the Act to be kept by market participants, including the form in which and the period for which the books, records and other documents are to be kept".

Paragraph 143(1)22 of the Act authorizes the Commission to make rules "prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under the Act, including requirements in respect of i. an annual report, ii. an annual information form, and iii. supplemental analysis of financial statements".

Paragraph 143(1)30 of the Act authorizes the Commission to make rules "prescribing time periods under 107 of the Act or varying or providing for exemptions from any requirement of Part XXI (Insider Trading and Self-Dealing)".

Paragraph 143(1)31 of the Act authorizes the Commission to make rules "regulating mutual funds or non-redeemable investment funds and the distribution and trading of the securities of the funds".

Paragraph 143(1)31(i) of the Act authorizes the Commission to make rules "varying Part XV (Prospectus – Distribution) or XVIII (Continuous Disclosure) by prescribing additional disclosure requirements in respect of the funds and requiring or permitting the use of particular forms or types of additional offering or other documents in connection with the funds".

Paragraph 143(1)31(ii) of the Act authorizes the Commission to make rules "prescribing permitted investment policy and investment practices for the funds and prohibiting or restricting certain investments or investment practices for the funds".

Paragraph 143(1)31(v) of the Act authorizes the Commission to make rules "prescribing matters affecting any of the funds that require the approval of securityholders of the funds, the Commission or the Director, including, in the case of securityholders, the level of approval".

Paragraph 143(1)31(xii) of the Act authorizes the Commission to make rules "prescribing requirements in respect of, or in relation to, promoters, advisers or persons and companies who administer or participate in the administration of the affairs of mutual funds or non-redeemable investment funds".

Paragraph 143(1)32 of the Act authorizes the Commission to make rules "respecting fees payable by an issuer to an adviser as consideration for investment advice, alone or together with administrative or management services provided to a mutual fund or non-redeemable investment fund.

Paragraph 143(1)34 of the Act authorizes the Commission to make rules "regulating commodity pools"

Paragraph 143(1)34(i) of the Act authorizes the Commission to make rules "varying Part XV (Prospectuses – Distribution) or XVIII (Continuous Disclosure) to prescribe additional disclosure requirements in respect of commodity pools and requiring or permitting the use of particular forms or types of additional offering or other documents in connection to commodity pools".

Paragraph 143(1)34(ii) of the Act authorizes the Commission to prescribe "requirements in respect of, or in relation to, promoters, advisers, persons and companies who administer or participate in the administration of the affairs of commodity pools".

Paragraph 143(1)37 of the Act authorizes the Commission to make rules "regulating labour sponsored investment fund corporations registered under Part III (Labour-Sponsored Investment Fund Corporations) of the *Community Small Business Investment Funds Act,* and the distribution and trading of the securities of the corporations and varying this Act in respect of the corporations".

Paragraph 143(1)37(ii) of the Act authorizes the Commission to make rules "requiring or prohibiting the use of particular forms or types of offering documents for or in respect of the securities of the corporations".

Paragraph 143(1)39 of the Act authorizes the Commission to make rules "requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by this Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents".

Paragraph 143(1)40(iii) of the Act authorizes the Commission to make rules "respecting the designation or recognition of any person, company or jurisdiction if advisable for purposes of the Act", including "designating a person or company for the purpose of the definition of "market participant" ".

Paragraph 143(1)47 of the Act authorizes the Commission to make rules "regulating scholarship plans and the distribution and trading of the securities of scholarship plans".

Paragraph 143(1)62 of the Act authorizes the Commission to make rules "requiring investment funds to establish and maintain a body for the purposes described in subsection 121.4(1), prescribing its powers and duties and prescribing requirements relating to,

i. the mandate and functioning of the body,

ii. the composition of the body and qualifications for membership on the body, including matters respecting the independence of members, and the process for selecting the members,

iii. the standard of care that applies to members of the body when exercising their powers, performing their duties and carrying out their responsibilities,

iv. the disclosure of information to securityholders of the investment fund, to the investment fund manager and to the Commission, and

v. matters affecting the investment fund that require review by the body or the approval of the body.".

NATIONAL INSTRUMENT 81-107

INDEPENDENT REVIEW COMMITTEE FOR INVESTMENT FUNDS

Table of Contents

Introduction

This National Instrument (the Instrument) contains both rules and accompanying commentary on those rules. The Canadian Securities Administrators (the CSA or we), have made these rules under authority granted by the securities legislation of their jurisdiction.

The commentary may explain the implications of a rule, offer examples or indicate different ways to comply with a rule. It may expand on a particular subject without being exhaustive. The commentary is not legally binding, but it does reflect the views of the CSA. Commentary always appears in italic type and, outside of this introduction, is titled "Commentary".

Part 1 Definitions and application

1.1 Investment funds subject to Instrument

(1) This Instrument applies to an investment fund that is a reporting issuer.

(2) In Québec, this Instrument does not apply to a reporting issuer organized under

(a) an Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.) R.S.Q., chapter F-3.2.1;

(b) an Act to establish Fondaction, le Fonds de dévelopement de la Confédération des syndicats nationaux pour la coopération et l'emploi (R.S.Q., chapter F-3.1.2); and

(c) an Act constituting Capital régional et coopératif Desjardins (R.S.Q., chapter C-6.1).

Commentary

1. *This Instrument applies to all publicly offered mutual funds and non-redeemable investment funds. Investment funds subject to this Instrument include:*
   - *labour sponsored or venture capital funds;*
   - *scholarship plans;*
   - *mutual funds and closed-end funds listed and posted for trading on a stock exchange or quoted on an over-the-counter market; and*
   - *investment funds not governed by National Instrument 81-102* Mutual Funds *(NI 81-102).*

2. *This Instrument does not regulate mutual funds that are not reporting issuers (commonly referred to as pooled funds), for example, mutual funds that sell securities to the public only under capital raising exemptions in securities legislation.*

1.2 Definition of "conflict of interest matter"

In this Instrument, "a conflict of interest matter" means

(a) a situation where a reasonable person would consider a manager, or an entity related to the manager, to have an interest that may conflict with the manager's ability to act in good faith and in the best interests of the investment fund; or

(b) a conflict of interest or self-dealing provision listed in Appendix A that restricts or prohibits an investment fund, a manager or an entity related to the manager from proceeding with a proposed action.

Commentary

1. *Section 5.1 of this Instrument requires that a manager refer <u>all</u> conflict of interest matters to the independent review committee (IRC).*

2. *The CSA do not consider the 'reasonable person' test described in paragraph (a) to capture inconsequential matters. It is expected that, among the factors the manager will look to for guidance to identify conflict of interest matters caught by this Instrument, will be industry best practices. The CSA expect, however, each*

manager to consider the nature of its investment fund operations when making its decisions about which conflict of interest matters it faces for the funds it manages.

3. *The types of conflicts of interest faced by the portfolio manager or portfolio adviser (or sub-adviser) or any other entity related to the manager this Instrument captures relate to the decisions made on behalf of the investment fund that may affect or influence the manager's ability to make decisions in good faith and in the best interests of the investment fund. This Instrument is not intended to capture the conflicts of interest at the service provider level generally.*

   The CSA expect the manager to consider whether a particular portfolio manager or portfolio adviser or any other 'entity related to the manager' would have any conflicts of interest falling within the definition.

   For example, paragraph (a) might, depending on the circumstances, capture these conflicts of the portfolio manager or portfolio adviser:
   - *portfolio management processes for the investment fund, including allocation of investments among a family of investment funds; and*
   - *trading practices for the investment fund, including negotiating soft dollar arrangements with dealers with whom the adviser places portfolio transactions for the investment fund.*

4. *The CSA contemplate that an 'entity related to the manager' will have its own policies and procedures to address any conflicts of interest in its operations. It is expected the manager will make reasonable inquiries of these policies and procedures. The conflicts of interest facing these entities, including any third party portfolio manager or portfolio adviser, may affect, or be perceived to affect, the manager's ability to make decisions in the best interests of the investment fund. The manager is expected to refer such conflicts to the IRC under this Instrument.*

5. *For greater certainty, paragraph (b) requires that a 'conflict of interest matter' includes any course of action that the investment fund, the manager or an entity related to the manager would otherwise be restricted or prohibited from proceeding with because of a conflict of interest or self-dealing prohibition in securities legislation. These include the types of transactions described under subsection 5.2(1) of this Instrument.*

1.3 Definition of "entity related to the manager"

In this Instrument, "entity related to the manager" means

(a) a person or company that can direct or materially affect the direction of the management and policies of the manager or the investment fund, other than as a member of the independent review committee; or

(b) an associate, affiliate, partner, director, officer or subsidiary of the manager or of a person or company referred to in paragraph (a).

Commentary

1. *The CSA consider an 'entity related to the manager' in paragraph (a) to include:*
   - *the portfolio manager or portfolio adviser (or sub-adviser) of the investment fund, including any third party portfolio manager or portfolio adviser;*
   - *the administrator of a scholarship plan; and*
   - *any person or company that can materially direct or affect the manager's management or policies, including through contractual agreements or ownership of voting securities.*

1.4 Definition of "independent"

(1) In this Instrument, a member of the independent review committee is "independent" if the member has no material relationship with the manager, the investment fund, or an entity related to the manager.

(2) For the purposes of subsection (1), a material relationship means a relationship which could reasonably be perceived to interfere with the member's judgment regarding a conflict of interest matter.

Commentary

1. *Under subsection 3.7(3), all members of the IRC must be independent of the manager, the investment fund and entities related to the manager. The CSA believe that all members must be independent because the principal function of the IRC is to review activities and transactions that involve inherent conflicts of interest between an investment fund and its manager. Given this role, it is important that the members of the IRC are free from conflicting loyalties.*

2. *While the members of the IRC should not themselves be subject to inherent conflicts or divided loyalties, the CSA recognize that there may be inherent conflicts relating to inter-fund issues where a single IRC acts for a family of investment funds. In those cases, this Instrument requires members to conduct themselves in accordance with their written charter and in accordance with the standard of care set out in this Instrument.*

   The CSA do not consider the IRC's ability to set its own reasonable compensation to be a material relationship with the manager or investment fund under subsection 1.4(1).

3. *A material relationship referred to in subsection 1.4(1) may include an ownership, commercial, charitable, industrial, banking, consulting, legal, accounting or familial relationship. The CSA expect managers and IRC members to consider both past and current relationships when determining whether a material relationship exists.*

For example, depending on the circumstances, the following individuals may be independent under section 1.4:

- *an independent member of an existing advisory board or IRC of an investment fund;*
- *an independent member or former independent member of the board of directors, or of a special committee of the board of directors, of an investment fund;*
- *a former independent member of the board of directors, or special committee of the board of directors, of the manager;*
- *an individual appointed as a trustee for an investment fund; and*
- *an independent member of the board of directors, or of a special committee of the board of directors, of a registered trust company that acts as trustee for an investment fund.*

By way of further example, the CSA consider it unlikely that the following individuals would be independent under section 1.4:

- *a person who is or has recently been an employee or executive officer of the manager or investment fund; and*
- *a person whose immediate family member is or has recently been an executive officer of the manager or investment fund.*

The CSA also consider that it would be rare that a member of the board of directors, or special committee of the board of directors, of a manager could be 'independent' within the meaning of this Instrument. One such example of when a member of the board of directors of a manager could be 'independent' may be "owner-operated" investment funds, sold exclusively to defined groups of investors, such as members of a trade or professional association or co-operative organization, who directly or indirectly, own the manager. In the case of these investment funds, the CSA view the interests of the independent members of the board of directors of the manager and investors as aligned.

1.5 Definition of "inter-fund self-dealing investment prohibitions"

In this Instrument, "inter-fund self-dealing investment prohibitions" means the provisions listed in Appendix B that prohibit

(a) a portfolio manager from knowingly causing any investment portfolio managed by it to purchase or sell, or

(b) an investment fund from purchasing or selling,

the securities of an issuer from or to the account of a responsible person, an associate of a responsible person or the portfolio manager.

1.6 Definition of "manager"

In this Instrument, "manager" means a person or company that directs the business, operations and affairs of an investment fund.

Commentary

1. *The CSA are of the view that the term 'manager' should be interpreted broadly.*

   The term "manager" is intended to include a group of members on the board of an investment fund or the general partner of an investment fund organized as a limited partnership, where it acts in the capacity of 'manager'/decision-maker.

2. *The CSA have, in connection with prospectus reviews, on occasion encountered investment funds structured in unusual ways. The CSA may examine an investment fund if it seems that it was structured to avoid the operation of this Instrument.*

1.7 Definition of "standing instruction"

In this Instrument, "standing instruction" means a written approval or recommendation from the independent review committee that permits the manager to proceed with a proposed action under section 5.2 or 5.3 on an ongoing basis.

Part 2 Functions of the manager

2.1 Manager standard of care

A manager in exercising its powers and discharging its duties related to the management of the investment fund must

(a) act honestly and in good faith, and in the best interests of the investment fund; and

(b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Commentary

1. *This section introduces a required standard of care for managers in certain jurisdictions and is intended to create a uniform standard of care provision for managers of investment funds subject to this Instrument.*

2.2 Manager to have written policies and procedures

(1) Before proceeding with a conflict of interest matter or any other matter that securities legislation requires the manager to refer to the independent review committee, the manager must

(a) establish written policies and procedures that it must follow on that matter or on that type of matter, having regard to its duties under securities legislation; and

(b) refer the policies and procedures to the independent review committee for its review and input.

(2) In establishing the written policies and procedures described in subsection (1), the manager must consider the input of the independent review committee, if any.

(3) The manager may revise its policies and procedures if it provides the independent review committee with a written description of any significant changes for the independent review committee's review and input before implementing the revisions.

Commentary

1. Section 2.2 contemplates that a manager should identify for each investment fund the conflict of interest matters it <u>*expects*</u> *will arise and that will be required to be referred to the IRC under section 5.1, and review its policies and procedures for those matters with the IRC.*

Section 2.2 further requires the manager to establish policies and procedures for other matters it <u>*expects*</u> *will arise and that will be required by securities legislation to be referred to the IRC, for example, certain reorganizations and transfers of assets between related mutual funds under Part 5 of NI 81-102.*

2. A manager is expected to establish policies and procedures that are consistent with its obligations to the investment fund under securities legislation to make decisions in the best interests of the fund. Paragraph (1)(a) is intended to reinforce this obligation.

A manager that manages more than one investment fund may establish policies and procedures for an action or category of actions for all of the investment funds it manages. Alternatively, the manager may establish separate policies and procedures for the action or category of actions for each of its investment funds, or groups of its investment funds.

However structured, the CSA expect the written policies and procedures the manager establishes to be designed to prevent any violations by the manager and the investment fund of securities legislation in the areas that this Instrument addresses, and to detect and promptly correct any violations that occur.

3. A manager is expected to follow the policies and procedures established under this section. In referring a matter to the IRC under section 5.1, the CSA expect the manager to inform the IRC whether its proposed action follows its written policies and procedures on the matter.

If an unanticipated conflict of interest matter arises for which the manager does not have a policy and procedure, the CSA expect the manager to bring the matter and its proposed action to the IRC for its review and input at the time the matter is referred to the IRC.

4. *Small investment fund families may require fewer written policies and procedures than large fund complexes that, for example, have conflicts of interest as a result of affiliations with other financial service firms.*

2.3 Manager to maintain records

A manager must maintain a record of any activity that is subject to the review of the independent review committee, including

(a) a copy of the policies and procedures that address the matter;

(b) minutes of its meetings, if any; and

(c) copies of materials, including any written reports, provided to the independent review committee.

Commentary

1. *This section is intended to assist the CSA in determining whether the manager is adhering to this Instrument, and in identifying weaknesses in the manager's policies and procedures if violations do occur. The CSA expect managers to keep records in accordance with existing best practices.*

2. *A manager is expected under this section to keep minutes only of any material discussions it has at meetings with the IRC or internally on matters subject to the review of the IRC.*

   The CSA do not view this section or this Instrument as preventing the IRC and manager from sharing record keeping and maintaining joint records of IRC and manager meetings.

3. *The CSA expect a manager to keep records of the actions it takes in respect of a matter referred to the IRC. This includes any otherwise restricted or prohibited transactions described in subsection 5.2(1) for which the manager requires the IRC's approval under Part 6 of this Instrument or under Part 4 of NI 81-102.*

2.4 Manager to provide assistance

(1) When a manager refers to the independent review committee a conflict of interest matter or any other matter that securities legislation requires it to refer, or refers its policies and procedures related to such matters, the manager must

(a) provide the independent review committee with information sufficient for the independent review committee to properly carry out its responsibilities, including

(i) a description of the facts and circumstances giving rise to the matter;

(ii) the manager's policies and procedures;

(iii) the manager's proposed course of action, if applicable; and

(iv) all further information the independent review committee reasonably requests;

(b) make its officers who are knowledgeable about the matter available to attend meetings of the independent review committee or respond to inquiries of the independent review committee about the matter; and

(c) provide the independent review committee with any other assistance it reasonably requests in its review of the matter.

(2) A manager must not prevent or attempt to prevent the independent review committee, or a member of the independent review committee, from communicating with the securities regulatory authority or regulator.

Part 3 Independent review committee

3.1 Independent review committee for an investment fund

An investment fund must have an independent review committee.

Commentary

1. A manager is expected to establish an IRC using a structure that is appropriate for the investment funds it manages, having regard to the expected workload of that committee. For example, a manager may establish one IRC for each of the investment funds it manages, for several of its investment funds, or for all of its investment funds.

2. This Instrument does not prevent investment funds from sharing an IRC with investment funds managed by another manager. This Instrument also does not prevent a third party from offering IRCs for investment funds. Managers of smaller families of investment funds may find these to be cost-effective ways to establish IRCs for their investment funds.

3.2 Initial appointments

The manager must appoint each member of an investment fund's first independent review committee.

3.3 Vacancies and reappointments

(1) An independent review committee must fill a vacancy on the independent review committee as soon as practicable.

(2) A member whose term has expired, or will soon expire, may be reappointed by the other members of the independent review committee.

(3) In filling a vacancy on the independent review committee or reappointing a member of the independent review committee, the independent review committee must consider the manager's recommendations, if any.

(4) A member may not be reappointed for a term or terms of office that, if served, would result in the member serving on the independent review committee for longer than 6 years, unless the manager agrees to the reappointment.

(5) If, for any reason, an independent review committee has no members, the manager must appoint a member to fill each vacancy as soon as practicable.

Commentary

1. *Consistent with the manager's role to appoint the first members of an IRC, if at any time the IRC has no members, the manager will also appoint the replacement members. The CSA anticipate that the circumstances contemplated in subsection (5) will occur rarely, such as in the event of a change of manager or change in control of the manager. In these circumstances, managers should consider their timely disclosure obligations under securities legislation.*

2. *The manager may suggest candidates and may provide assistance to the IRC in the selection and recruitment process when a vacancy arises. Subsection (3) requires the IRC to consider the manager's recommendation, if any, when filling a vacancy or reappointing a member of the IRC.*

   The CSA believe that allowing the IRC to select its own members and decide the term a member can serve will foster independent-minded committees that will be focussed on the best interests of the investment fund. The CSA also consider the members of the IRC to be best-positioned to judge the manner in which a prospective member can contribute to the effectiveness of the IRC.

3. *The maximum term limit of 6 years specified in subsection (4) for a member to serve on an investment fund's IRC is intended to enhance the independence and effectiveness of the IRC. An IRC may reappoint a member beyond the maximum term, but only with the agreement of the manager.*

3.4 Term of office

The term of office of a member of an independent review committee must be not less than 1 year and not more than 3 years, and must be set by the manager or the independent review committee, as the case may be, at the time the member is appointed.

Commentary

1. *To ensure continuity and continued independence from the manager, the CSA recommend that the terms of all IRC members be staggered.*

3.5 Nominating criteria

Before a member of the independent review committee is appointed, the manager or the independent review committee, as the case may be, must consider

(a) the competencies and skills the independent review committee, as a whole, should possess;

(b) the competencies and skills of each other member of the independent review committee; and

(c) the competencies and skills the prospective member would bring to the independent review committee.

Commentary

1. *Section 3.5 sets out the criteria the manager and the IRC must consider before appointing a member of the IRC. Subject to these requirements, the manager and the IRC may establish nominating criteria in addition to those set out in this section.*

3.6 Written charter

(1) The independent review committee must adopt a written charter that includes its mandate, responsibilities and functions, and the policies and procedures it will follow when performing its functions.

(2) If the independent review committee and the manager agree in writing that the independent review committee will perform functions other than those prescribed by securities legislation, the charter must include a description of the functions that are the subject of the agreement.

(3) In adopting the charter, the independent review committee must consider the manager's recommendations, if any.

Commentary

1. *The CSA expect the written charter to set out the necessary policies and procedures to ensure the IRC performs its role adequately and effectively and in compliance with this Instrument. An IRC acting for more than one investment fund may choose to establish a separate charter for each fund. Alternatively, an IRC may choose to establish one charter for all of the investment funds it oversees or groups of investment funds.*

2. *The IRC should consider the specific matters subject to its review when developing the policies and procedures to be set out in its charter.*

3. *Without discussing all of the policies and procedures that may be set out in the written charter, the CSA expect that the written charter will include the following:*
   - *policies and procedures the IRC must follow when reviewing conflict of interest matters,*
   - *criteria for the IRC to consider in setting its compensation and expenses and the compensation and expenses of any advisors employed by the IRC,*
   - *a policy relating to IRC member ownership of securities of the investment fund, manager or in any person or company that provides services to the investment fund or the manager,*
   - *policies and procedures that describe how a member of the IRC is to conduct himself or herself when he or she faces a conflict of interest, or could be perceived to face a conflict of interest, with respect to a matter being considered or to be considered by the IRC,*
   - *policies and procedures that describe how the IRC is to interact with any existing advisory board or board of directors of the investment fund and the manager, and*
   - *policies and procedures that describe how any subcommittee of the IRC to which has been delegated any of the functions of the IRC, is to report to the IRC.*

4. *The manager and the IRC may agree that the IRC will perform functions in addition to those prescribed by this Instrument and elsewhere in securities legislation. This Instrument does not preclude those arrangements, nor does this Instrument regulate those arrangements.*

3.7 Composition

(1) An independent review committee must have at least three members.

(2) The size of the independent review committee is to be determined by the manager, with a view to facilitating effective decision-making, and may only be changed by the manager.

(3) Every independent review committee member must be independent.

(4) An independent review committee must appoint a member as Chair.

(5) The Chair of an independent review committee is responsible for managing the mandate, and responsibilities and functions, of the independent review committee.

Commentary

1. *To ensure its effectiveness, a manager should consider the workload of the IRC when determining its size. The CSA expect that the manager will seek the input of the IRC prior to changing the size of the IRC.*

2. *The CSA anticipate that the Chair of the IRC will lead IRC meetings, foster communication among IRC members, and ensure the IRC carries out its responsibilities in a timely and effective manner.*

   The CSA expect the IRC Chair will be the primary person to interact with the manager on issues relating to the investment fund. An IRC Chair and the manager may agree to have regular communication as a way for the IRC Chair to keep informed of the operations of the investment fund between meetings, and of any significant events relating to the investment fund.

3. *The requirement that all members of the IRC be independent does not preclude the IRC from consulting with others who can help the members understand matters that are beyond their specific expertise, or help them understand industry practices or trends, for example.*

3.8 Compensation

(1) The manager may set the initial compensation and expenses of an independent review committee that is appointed under section 3.2 or subsection 3.3(5).

(2) Subject to subsection (1), the independent review committee must set reasonable compensation and proper expenses for its members.

(3) When setting its compensation and expenses under subsection (2), the independent review committee must consider

(a) the independent review committee's most recent assessment of its compensation under paragraph 4.2(2)(b); and

(b) the manager's recommendations, if any.

Commentary

1. *This section permits the manager to determine the amount and type of compensation and expenses the IRC members will initially receive. To avoid undue influence from the manager, subsection (2) requires that, subsequent to the initial setting of compensation and other than in the unusual circumstance described in subsection 3.3(5), members of the IRC have the sole authority for determining their*

compensation. The Instrument permits the manager to recommend to the members of the IRC the amount and type of compensation to be paid, and requires the IRC to consider that recommendation.

2. The CSA expect the IRC and the manager to decide the IRC's compensation in a manner consistent with good governance practices. Among the factors the IRC and manager should consider when determining the appropriate level of compensation are the following:

- *the number, nature and complexity of the investment funds and the fund families for which the IRC acts;*
- *the nature and extent of the workload of each member of the IRC, including the commitment of time and energy that is expected from each member;*
- *industry best practices, including industry averages and surveys on IRC compensation; and*
- *the best interests of the investment fund.*

3. The CSA expect that the IRC and the manager will discuss any instance where the IRC disagrees with the manager's recommendations under paragraph (3)(b), in an attempt to reach an agreement that is satisfactory to both the IRC and the manager.

3.9 Standard of care

(1) Every member of an independent review committee, in exercising his or her powers and discharging his or her duties related to the investment fund, and, for greater certainty, not to any other person, as a member of the independent review committee must

(a) act honestly and in good faith, with a view to the best interests of the investment fund; and

(b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) Every member of an independent review committee must comply with this Instrument and the written charter of the independent review committee required under section 3.6.

(3) A member of the independent review committee does not breach paragraph (1)(b), if the member exercised the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, including reliance in good faith on

(a) a report or certification represented as full and true to the independent review committee by the manager or an entity related to the manager; or

(b) a report of a person whose profession lends credibility to a statement made by the person.

(4) A member of the independent review committee has complied with his or her duties under paragraph (1)(a) if the member has relied in good faith on

(a) a report or certification represented as full and true to the independent review committee by the manager or an entity related to the manager; or

(b) a report of a person whose profession lends credibility to a statement made by the person.

Commentary

1. The standard of care for IRC members under this section is consistent with the special relationship between the IRC and the investment fund.

The CSA consider the role of the members of the IRC to be similar to corporate directors, though with a much more limited mandate, and therefore we would expect any defences available to corporate directors to also be available to IRC members.

2. The CSA consider the best interests of the investment fund referred to in paragraph (1)(a) to generally be consistent with the interests of the securityholders in the investment fund as a whole.

3. It is not the intention of the CSA to create a duty of care on the part of the IRC to any other person under paragraph (1)(b).

3.10 Ceasing to be a member

(1) An individual ceases to be a member of an independent review committee when

(a) the investment fund terminates;

(b) the manager of the investment fund changes, unless the new manager is an affiliate of the former manager; or

(c) there is a change of control of the manager of the investment fund.

(2) An individual ceases to be a member of an independent review committee if

(a) the individual resigns;

(b) the individual's term of office expires and the member is not reappointed;

(c) a majority of the other members of the independent review committee vote to remove the individual; or

(d) a majority of the securityholders of the investment fund vote to remove the individual at a special meeting called for that purpose by the manager.

(3) An individual ceases to be a member of the independent review committee if the individual is

(a) no longer independent within the meaning of section 1.4 and the cause of the member's non-independence is not temporary for which the member can recuse himself or herself;

(b) of unsound mind and has been so found by a court in Canada or elsewhere;

(c) bankrupt;

(d) prohibited from acting as a director or officer of any issuer in Canada;

(e) subject to any penalties or sanctions made by a court relating to provincial and territorial securities legislation; or

(f) a party to a settlement agreement with a provincial or territorial securities regulatory authority.

(4) If an individual ceases to be a member of the independent review committee due to a circumstance described in subsection (2), the manager must, as soon as practicable, notify the securities regulatory authority or regulator of the date and the reason the individual ceased to be a member.

(5) The notification referred to in subsection (4) is satisfied if it is made to the investment fund's principal regulator.

(6) The notice of a meeting of securityholders of an investment fund called to consider the removal of a member under paragraph (2)(d) must comply with the notice requirements set out in section 5.4 of National Instrument 81-102 *Mutual Funds*.

(7) For any member of the independent review committee who receives notice or otherwise learns of a meeting of securityholders called to consider the removal of the member under paragraph (2)(d),

(a) the member may submit to the manager a written statement giving reasons for opposing the removal; and

(b) the manager must, as soon as practicable, send a copy of the statement referred to in paragraph (a) to every securityholder entitled to receive notice of the meeting and to the member unless the statement is included in or attached to the notice documents required by subsection (6).

Commentary

1. The CSA do not anticipate that the securityholder vote contemplated in paragraph 3.10(2)(d) will be routine. When a manager calls a meeting of securityholders to *consider the removal of a member, subsection (7) requires that the member will have an opportunity to respond to the manager's notice.*

2. *In the circumstances described in paragraphs 3.10(1)(b) and (c), all members of the IRC will cease to be members. This does not preclude the new manager from reappointing the former members of the IRC under subsection 3.3(5).*

3. *Paragraph 3. 10(3)(a) is meant to exclude a situation where a member may face, or be perceived to face, a conflict of interest with respect to a specific conflict of interest matter the IRC is considering.*

3.11 Authority

(1) An independent review committee has authority to

(a) request information it determines useful or necessary from the manager and its officers to carry out its duties;

(b) engage independent counsel and other advisors it determines useful or necessary to carry out its duties;

(c) set reasonable compensation and proper expenses for any independent counsel and other advisors engaged by the independent review committee; and

(d) delegate to a subcommittee of at least three members of the independent review committee any of its functions, except the removal of a member under paragraph 3.10(2)(c).

(2) If the independent review committee delegates to a subcommittee under paragraph (1)(d) any of its functions, the subcommittee must report on its activities to the independent review committee at least annually.

(3) Despite any other provision in this Instrument, an independent review committee may communicate directly with the securities regulatory authority or regulator with respect to any matter.

Commentary

1. *The CSA recognize that utilizing the manager's staff and industry experts may be important to help the members of the IRC deal with matters that are beyond the level of their expertise, or help them understand different practices among investment funds.*

While this Instrument does not require legal counsel or other advisers for the IRC to be independent of the manager or the investment fund, there may be instances when the members of the IRC believe they need access to counsel or advisers who are free from conflicting loyalties. Paragraph (1)(b) gives the IRC the discretion *and authority to hire independent legal counsel and other advisers. The CSA expect that the IRC will use independent advisors selectively and only to assist, not replace, IRC decision-making. The CSA do not anticipate that IRCs will routinely use external counsel and other advisers.*

2. *Paragraph (1)(d) is intended to allow an IRC of more than three members to delegate any of its functions, except the removal of an IRC member, to a subcommittee of at least three members. The CSA expect in such instances that the written charter of the IRC will include a defined mandate and reporting requirements for any subcommittee.*

   The CSA do not consider delegation by the IRC of a function to a subcommittee to absolve the IRC from its responsibility for the function.

3. *Subsection (3) specifies that the IRC may inform the securities regulatory authority or regulator of any concerns or issues that it may not otherwise be required to report. For example, the IRC may be concerned if very few matters have been referred by the manager for review, or it may have found, or have reasonable grounds to suspect, a breach of securities legislation has occurred. However, the IRC has no obligation to report matters other than those prescribed by this Instrument or elsewhere in securities legislation.*

4. *The CSA do not consider that this section or this Instrument prevents the manager from communicating with the securities regulatory authorities with respect to any matter.*

3.12 Decisions

(1) A decision by the independent review committee on a conflict of interest matter or any other matter that securities legislation requires the independent review committee to review requires the agreement of a majority of the independent review committee's members.

(2) If, for any reason, an independent review committee has two members, a decision by the independent review committee must be unanimous.

(3) An independent review committee with one member may not make a decision.

Commentary

1. *This section requires a decision of the members of the IRC to represent the majority. Should the IRC find itself with two members, subsection (2) permits the IRC to continue to make decisions on conflict of interest matters provided the remaining two members agree.*

3.13 Fees and expenses to be paid by the investment fund

The investment fund must pay from the assets of its fund all reasonable costs and expenses reasonably incurred in the compliance of this Instrument.

Commentary

1. *A manager is expected to allocate the costs associated with the IRC on an equitable and reasonable basis amongst the investment funds for which the IRC acts.*

   This Instrument does not prohibit a manager from reimbursing the investment fund for any of the costs associated with compliance with this Instrument. It is expected that the prospectus will disclose whether or not the manager will reimburse the investment fund.

2. *The CSA do not expect costs that the manager or investment fund would ordinarily incur in the operation of the investment fund without the presence of the IRC (for example, rent) to be charged to the investment fund under this section. Among the costs the CSA expect will be charged to the investment fund under this section are the following:*
   - *the compensation and expenses payable to the members of the IRC and to any independent counsel and other advisers employed by the IRC;*
   - *the costs of the orientation and continuing education of the members of the IRC; and*
   - *the costs and expenses associated with a special meeting of securityholders called by the manager to remove a member or members of the IRC.*

3.14 Indemnification and insurance

(1) In this section, “member” means:

(a) a member of the independent review committee;

(b) a former member of the independent review committee; and

(c) the heirs, executors, administrators or other legal representatives of the estate of an individual in (a) or (b).

(2) An investment fund and manager may indemnify a member against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the person in respect of any civil, criminal, administrative, investigative or other proceeding in which the member is involved because of being or having been a member.

(3) An investment fund and manager may advance moneys to a member for the costs, charges and expenses of a proceeding referred to in subsection (2). The member must repay the moneys if the member does not fulfill the conditions of subsection (4).

(4) An investment fund and manager may not indemnify a member under subsection (2) unless

(a) the member acted honestly and in good faith, with a view to the best interests of the investment fund; and

(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the member had reasonable grounds for believing that the individual's conduct was lawful.

(5) Despite subsection (2), a member referred to in that subsection is entitled to an indemnity from the investment fund in respect of all costs, charges and expenses reasonably incurred by the member in connection with the defence of any civil, criminal, administrative, investigative or other proceeding to which the member is subject because of the member's association with the investment fund as described in subsection (2), if the member seeking indemnity

(a) was not judged by the court or other competent authority to have committed any fault or omitted to do anything that ought to have been done; and

(b) fulfills the conditions set out in subsection (4).

(6) An investment fund and manager may purchase and maintain insurance for the benefit of any member referred to in subsection (2) against any liability incurred by the member in his or her capacity as a member.

Commentary

1. This Instrument requires that members of an IRC be accountable for their actions. At the same time, this section does not prevent an investment fund or a manager from limiting a member's financial exposure through insurance and indemnification.

2. This section permits an investment fund and the manager to indemnify and purchase insurance coverage for the members of the IRC on terms comparable to those applicable to directors of corporations. The broad goals underlying the indemnity provisions are to allow for reimbursement for reasonable good faith behaviour, thereby discouraging the hindsight application of perfection to the IRC's actions.

Under this section, the investment fund is required to indemnify an IRC member who has been sued and has successfully defended the action, subject to certain conditions. If the IRC member does not defend the action successfully, the investment fund and manager may indemnify the member in certain circumstances. The intention of indemnity is to encourage responsible behaviour yet still permit enough leeway to attract strong candidates.

The two conditions which must be satisfied in either instance under this section for an IRC member to be indemnified are:

- *the IRC member must have acted in a manner consistent with his or her fiduciary duty with respect to the action or matter for which the IRC member is seeking the indemnification; and*
- *the IRC member must have had reasonable grounds for believing that his or her conduct was lawful.*

The CSA expect any such coverage to be on reasonable commercial terms.

3. *It is open to members of the IRC to negotiate contractual indemnities with the manager and the investment fund provided the protection is permissible under this section.*

3.15 Orientation and continuing education

(1) The manager and independent review committee must provide orientation consisting of educational or informational programs that enable a new independent review committee member to understand

(a) the role of the independent review committee and its members collectively; and

(b) the role of the individual member.

(2) The manager may provide a member of the independent review committee with educational or informational programs, as the manager considers useful or necessary, that enable the member to understand the nature and operation of the manager's and investment fund's businesses.

(3) The independent review committee may reasonably supplement the educational and informational programs provided to its members under this section.

Commentary

1. *The CSA expect members of the IRC to regularly participate in educational or informational programs that may be useful to the members in understanding and fulfilling their duties.*

   Section 3.15 sets out only the minimum educational programs that a manager and IRC are expected to provide for members of the IRC. Educational activities could include presentations, seminars or discussion groups conducted by:
   - *personnel of the investment fund or manager,*
   - *outside experts,*
   - *industry groups,*
   - *representatives of the investment fund's various service providers, and*
   - *educational organizations and institutions.*

2. *The CSA expect a discussion of a member's role referred to in paragraph (1)(b) to include a reference to the commitment of time and energy that is expected from the member.*

Part 4 Functions of independent review committee

4.1 Review of matters referred by manager

(1) The independent review committee must review and provide its decision under section 5.2 or under section 5.3 to the manager on a conflict of interest matter that the manager refers to the independent review committee for review.

(2) The independent review committee must perform any other function required by securities legislation.

(3) The independent review committee has the authority to choose whether to deliberate and decide on a matter referred to in subsection (1) and (2) in the absence of the manager, any representative of the manager and any entity related to the manager.

(4) Despite subsection (3), an independent review committee must hold at least one meeting annually at which the manager, any representative of the manager or any entity related to the manager are not in attendance.

(5) The independent review committee has no power, authority or responsibility for the operation of the investment fund or the manager except as provided in this section.

Commentary

1. *The Instrument requires the IRC only to consider matters referred to it by the manager that involve or may be perceived to involve a conflict of interest for the manager between its own interests and its duty to manage an investment fund.*

   Securities legislation also requires the IRC to consider other matters. For example, a change in a mutual fund's auditor and certain reorganizations and transfers of assets between related mutual funds under Part 5 of NI 81-102 require the review and prior approval of the IRC for the manager to proceed.

2. *The manager and the IRC may agree that the IRC will perform functions in addition to those prescribed by this Instrument and elsewhere in securities legislation. This Instrument does not preclude those arrangements, nor does this Instrument regulate those arrangements.*

3. *Subsection (3) permits the IRC to decide who, other than IRC members, may attend any IRC meeting other than the meeting referred to in subsection (4). Subsection (3) also does not preclude the IRC from receiving oral or written submissions from the manager or from holding meetings with representatives of the manager or an entity related to the manager or any other person not independent under this*

Instrument. The CSA believe utilizing the manager's staff and industry experts may be important to help the members of the IRC understand matters that are beyond their specific expertise, or help them understand different practices among investment funds.

4. *The requirement that the IRC hold at least one meeting without anyone else present (including management of the investment fund) is intended to give the members of the IRC an opportunity to speak freely about any sensitive issues, including any concerns about the manager.*

The CSA are of the view that subsection (4) is satisfied if the IRC holds a portion of any meeting annually without the presence of the manager, any representative of the manager or any entity related to the manager.

4.2 Regular assessments

(1) At least annually, the independent review committee must review and assess the adequacy and effectiveness of

(a) the manager's written policies and procedures required under section 2.2;

(b) any standing instruction it has provided to the manager under section 5.4;

(c) the manager's and the investment fund's compliance with any conditions imposed by the independent review committee in a recommendation or approval it has provided to the manager; and

(d) any subcommittee to which the independent review committee has delegated, under paragraph 3.11(1)(d), any of its functions.

(2) At least annually, the independent review committee must review and assess

(a) the independence of its members; and

(b) the compensation of its members.

(3) At least annually, the independent review committee must review and assess its effectiveness as a committee, as well as the effectiveness and contribution of each of its members.

(4) The review by the independent review committee required under subsection (3) must include a consideration of

(a) the independent review committee's written charter referred to in section 3.6;

(b) the competencies and knowledge each member is expected to bring to the independent review committee;

(c) the level of complexity of the issues reasonably expected to be raised by members in connection with the matters under review by the independent review committee; and

(d) the ability of each member to contribute the necessary time required to serve effectively on the independent review committee.

Commentary

1. Section 4.2 sets out the minimum assessments the independent review committee must perform. Subject to these requirements, the IRC may establish a process for (and determine the frequency of) additional assessments as it sees fit.

2. The annual self-assessment by the IRC should improve performance by strengthening each member's understanding of his or her role and fostering better communication and greater cohesiveness among members.

3. When evaluating individual performance, it is expected that the IRC consider factors such as the member's attendance and participation in meetings, continuing education activities and industry knowledge. The manager may also provide IRC members with feedback which the IRC may consider.

It is expected the self-assessment should focus on both substantive and procedural aspects of the IRC's operations. When evaluating the IRC's structure and effectiveness, the IRC should consider factors such as the following:

- *the frequency of meetings;*
- *the substance of meeting agendas;*
- *the policies and procedures that the manager has established to refer matters to the IRC;*
- *the usefulness of the materials provided to the members of the IRC;*
- *the collective experience and background of the members of the IRC;*
- *the number of funds the IRC oversees; and*
- *the amount and form of compensation the members receive from an individual investment fund and in aggregate from the fund family.*

4. The CSA expect the members of an IRC to respond appropriately to address any weaknesses found in a self-assessment. For example, it may be necessary to improve the IRC members' continuing education, recommend ways to improve the quality and sufficiency of the information provided to them, or recommend to the manager decreasing the number of investment funds under the IRC's oversight.

In rare circumstances, the IRC may consider removing a member of the IRC as contemplated under paragraph 3.10(2)(c) as a result of the self-assessment.

4.3 Reporting to the manager

The independent review committee must as soon as practicable deliver to the manager a written report of the results of an assessment under subsection 4.2(1) and (2) that includes

(a) a description of each instance of a breach of any of the manager's policies or procedures of which the independent review committee is aware, or that it has reason to believe has occurred;

(b) a description of each instance of a breach of a condition imposed by the independent review committee in a recommendation or approval it has provided to the manager, of which the independent review committee is aware, or that it has reason to believe has occurred; and

(c) recommendations for any changes the independent review committee considers should be made to the manager's policies and procedures.

4.4 Reporting to securityholders

(1) An independent review committee must prepare, for each financial year of the investment fund and no later than the date the investment fund files its annual financial statements, a report to securityholders of the investment fund that describes the independent review committee and its activities for the financial year and includes

(a) the name of each member of the independent review committee at the date of the report, with

(i) the member's length of service on the independent review committee;

(ii) the name of any other fund family on whose independent review committee the member serves; and

(iii) if applicable, a description of any relationship that may cause a reasonable person to question the member's independence and the basis upon which the independent review committee determined that the member is independent;

(b) the percentage of securities of each class or series of voting or equity securities beneficially owned, directly or indirectly, in aggregate, by all the members of the independent review committee of the investment fund

(i) in the investment fund if the aggregate level of ownership exceeds 10 percent;

(ii) in the manager; or

(iii) in any person or company that provides services to the investment fund or the manager;

(c) the identity of the Chair of the independent review committee;

(d) any changes in the composition or membership of the independent review committee during the period;

(e) the aggregate compensation paid to the independent review committee and any indemnities paid to members of the independent review committee by the investment fund during the period;

(f) a description of the process and criteria used by the independent review committee to determine the appropriate level of compensation of its members and any instance when, in setting the compensation and expenses of its members, the independent review committee did not follow the recommendation of the manager, including

(i) a summary of the manager's recommendation; and

(ii) the independent review committee's reasons for not following the recommendation;

(g) if known, a description of each instance when the manager acted in a conflict of interest matter referred to the independent review committee for which the independent review committee did not give a positive recommendation, including

(i) a summary of the recommendation; and

(ii) if known, the manager's reasons for proceeding without following the recommendation of the independent review committee and the result of proceeding;

(h) if known, a description of each instance when the manager acted in a conflict of interest matter but did not meet a condition imposed by the independent review committee in its recommendation or approval, including

(i) the nature of the condition;

(ii) if known, the manager's reasons for not meeting the condition; and

(iii) whether the independent review committee is of the view that the manager has taken, or proposes to take, appropriate action to deal with the matter; and

(i) a brief summary of any recommendations and approvals the manager relied upon during the period.

(2) The report required under subsection (1) must as soon as practicable

(a) be sent by the investment fund, without charge, to a securityholder of the investment fund, upon the securityholder's request;

(b) be made available and prominently displayed by the manager on the investment fund's, investment fund family's or manager's website, if it has a website;

(c) be filed by the investment fund with the securities regulatory authority or regulator; and

(d) be delivered by the independent review committee to the manager.

Commentary

1. *The report to be filed with the securities regulatory authorities should be filed on the SEDAR group profile number of the investment fund as a continuous disclosure document. The CSA expect that the investment fund will pay any reasonable costs associated with the filing of the report.*

2. *It is expected the report will be displayed in an easily visible location on the home page of the website of the investment fund, the investment fund family or the manager, as applicable. The CSA expect the report to remain on the website at least until the posting of the next report.*

3. *The disclosure required in subparagraph (1)(a)(iii) is expected to be provided only in instances where a member could reasonably be perceived to not be 'independent' under this Instrument.*

4.5 Reporting to securities regulatory authorities

(1) If the independent review committee is aware of an instance where the manager acted in a conflict of interest matter under subsection 5.2(1) but did not comply with a condition or conditions imposed by securities legislation or the independent review committee in its approval, the independent review committee must, as soon as practicable, notify in writing the securities regulatory authority or regulator.

(2) The notification referred to in subsection (1) is satisfied if it is made to the investment fund's principal regulator.

Commentary

1. *Subsection (1) captures a breach of a condition imposed for an otherwise prohibited or restricted transaction described in subsection 5.2(1), for which the manager has acted under Part 6 of this Instrument or under Part 4 of NI 81-102. This includes a breach of a condition imposed by the IRC as part of its approval (including a standing instruction), or, for example, any conditions imposed for*

inter-fund trading under section 6.1 of this Instrument or section 4.3 of NI 81-102, for transactions in securities of related issuers under section 6.2 of this Instrument, and for purchases of securities underwritten by related underwriters under section 4.1 of NI 81-102.

The CSA consider that a breach of a condition imposed by securities legislation (including this Instrument) or by the IRC in a transaction described in subsection 5.2(1) will result in the transaction having been made in contravention of securities legislation. In such instances, the securities regulatory authorities may consider taking various action, including requiring the manager to unwind the transaction and pay any costs associated with doing so.

2. *The CSA expect that the IRC will include in its notification the steps the manager proposes to take, or has taken, to remedy the breach, if known.*

3. *Notification under this section is not intended to be a mechanism to resolve disputes between an IRC and a manager, or to raise inconsequential matters with the securities regulatory authorities.*

4. *The CSA do not view this section or this Instrument as preventing the manager from communicating with the securities regulatory authorities with respect to any matter.*

4.6 Independent review committee to maintain records

An independent review committee must maintain records, including

(a) a copy of its current written charter;

(b) minutes of its meetings;

(c) copies of any materials and written reports provided to it;

(d) copies of materials and written reports prepared by it; and

(e) the decisions it makes.

Commentary

1. *Section 4.6 sets out the minimum requirements regarding the record keeping by an IRC. The CSA expect IRCs to keep records in accordance with existing best practices.*

2. *The IRC is expected under paragraph (b) to keep minutes only of any material discussions it has at meetings with the manager or internally on matters subject to its review.*

The CSA do not view this section or this Instrument as preventing the IRC and manager from sharing record keeping and maintaining joint records of IRC and manager meetings.

3. The CSA expect the IRC to keep records of any actions it takes in respect of a matter referred to it, in particular any transaction otherwise prohibited or restricted by securities legislation, as described in subsection 5.2(1), for which the manager has sought the approval of the IRC.

Part 5 Conflict of interest matters

5.1 Manager to refer conflict of interest matters to independent review committee

(1) Subject to section 5.4, when a conflict of interest matter arises, and before taking any action in the matter, the manager must

(a) determine what action it proposes to take in respect of the matter, having regard to

(i) its duties under securities legislation; and

(ii) its written policies and procedures on the matter; and

(b) refer the matter, along with its proposed action, to the independent review committee for its review and decision.

(2) If a manager must hold a meeting of securityholders to obtain securityholder approval before taking an action in a conflict of interest matter, the manager must include a summary of the independent review committee's decision under subsection (1) in the notice of the meeting.

Commentary

1. Section 5.1 recognizes that a manager may not be able to objectively determine whether it is acting in the best interests of the investment fund when it has a conflict of interest. This section requires managers to refer all conflict of interest matters – not just those subject to prohibitions or restrictions under securities legislation - to the IRC so that an independent perspective can be brought to bear on the manager's proposed action.

A decision tree for different types of conflict of interest matters is set out in Appendix A to the Commentary.

While the CSA expect the IRC to bring a high degree of rigour and skeptical objectivity to its review of conflict of interest matters, the CSA do not consider it the role of the IRC to second-guess the investment or business decisions of a manager or an entity related to the manager.

2. *Section 5.1 sets out how the manager must proceed when faced with a conflict of interest matter.*

   Referring proposed actions involving conflict of interest matters to the IRC for its review is not considered by the CSA to detract from the manager's obligations to the investment fund under securities legislation to make decisions in the best interests of the fund. Subparagraph (a)(i) is intended to reinforce this obligation.

3. *In referring a matter to the IRC, a manager is expected to inform the IRC whether its proposed action follows its written policies and procedures on the matter under section 2.2.*

   If an unanticipated conflict of interest matter arises for which the manager does not have an existing written policy and procedure, the CSA expect the manager to bring the matter and its proposed action to the IRC for its review and input at the time the matter is referred to the IRC.

4. *There may be matters that are subject to a securityholder vote that also involve a "conflict of interest matter" under this Instrument. For example, increases in the charges of the manager to the mutual fund will be a conflict of interest matter as well as a matter subject to a securityholder vote under Part 5 of National Instrument 81-102* Mutual Funds. *For these matters, subsection (2) requires a manager to refer the matter first to the IRC before seeking the approval of securityholders, and to include a summary of the IRC's decision in the written notice to securityholders.*

5.2 Matters requiring independent review committee approval

(1) A manager may not proceed with a proposed action under section 5.1 without the approval of the independent review committee if the action is

(a) an inter-fund trade as described in subsection 6.1(2) of this Instrument or a transaction as described in subsection 4.2(1) of National Instrument 81-102 *Mutual Funds*;

(b) a transaction in securities of an issuer as described in subsection 6.2(1) of this Instrument; or

(c) an investment in a class of securities of an issuer underwritten by an entity related to the manager as described in subsection 4.1(1) of National Instrument 81-102 *Mutual Funds*.

(2) An independent review committee must not approve an action unless it has determined, after reasonable inquiry, that the action

(a) is proposed by the manager free from any influence by an entity related to the manager and without taking into account any consideration relevant to an entity related to the manager;

(b) represents the business judgment of the manager uninfluenced by considerations other than the best interests of the investment fund;

(c) is in compliance with the manager's written policies and procedures relating to the action; and

(d) achieves a fair and reasonable result for the investment fund.

Commentary

1. *For the transactions described in subsection (1), provided the manager receives the IRC's approval under this section, and satisfies the additional conditions imposed under the applicable sections of Part 6 of this Instrument or Part 4 of NI 81-102, the manager will be permitted to proceed with the action without obtaining regulatory exemptive relief.*

   The IRC may give its approval for certain actions or categories of actions in the form of a standing instruction as described in section 5.4. If no standing instruction is in effect, the manager is required to seek the IRC's approval prior to proceeding with any action set out in subsection (1). An IRC may consider as guidance any conditions in prior exemptive relief orders, waivers or approvals obtained from the securities regulatory authorities when contemplating the appropriate terms and conditions in its approval.

2. *If the IRC does not approve a proposed action described in subsection (1), the manager is not permitted to proceed without obtaining exemptive relief from the securities regulatory authorities. The CSA consider it in the best interests of the investment fund, and ultimately investors, for the IRC to be able to stop any proposed action which does not meet the test in subsection (2).*

3. *The CSA would usually expect that, before the IRC approves a proposed action described in subsection (1), it will have requested from the manager or others a report or certification to assist in its determination that the test in subsection (2) has been met.*

4. *The CSA expect that the manager will discuss with the IRC any instance where the IRC does not approve a proposed action, so that an alternative action satisfactory to both the manager and the IRC can be found, if possible.*

5. *The CSA consider that the ability of the manager to seek the removal of a member or members of the IRC under paragraph 3.10(2)(d) sufficiently addresses any concern that a manager may have about an IRC's ongoing refusal to approve matters.*

5.3 Matters subject to independent review committee recommendation

(1) Before a manager may proceed with a proposed action under section 5.1 other than those set out in subsection 5.2(1),

(a) the independent review committee must provide a recommendation to the manager as to whether, in the committee's opinion after reasonable inquiry, the proposed action achieves a fair and reasonable result for the investment fund; and

(b) the manager must consider the recommendation of the independent review committee.

(2) If the manager decides to proceed with an action in a conflict of interest matter that, in the opinion of the independent review committee after reasonable inquiry, does not achieve a fair and reasonable result for the investment fund under paragraph (1)(a), the manager must notify in writing the independent review committee before proceeding with the proposed action.

(3) Upon receiving the notification described in subsection (2), the independent review committee may require the manager to notify securityholders of the investment fund of the manager's decision.

(4) A notification to securityholders under subsection (3) must

(a) sufficiently describe the proposed action of the manager, the recommendation of the independent review committee and the manager's reasons for proceeding;

(b) state the date of the proposed implementation of the action; and

(c) be sent by the manager to each securityholder of the investment fund at least thirty days before the effective date of the proposed action.

(5) The investment fund must, as soon as practicable, file the notification referred to in subsection (4) with the securities regulatory authority or regulator upon the notice being sent to securityholders.

Commentary

1. This section captures all conflict of interest matters a manager encounters other than those listed in subsection 5.2(1). This includes conflict of interest matters prohibited or restricted by securities legislation not specified in subsection 5.2(1), and a manager's business and commercial decisions made on behalf of the investment fund that may be motivated, or be perceived to be motivated, by the manager's own interests rather than the best interests of the investment fund. Examples include:

- *increasing charges to the investment fund for costs incurred by the manager in operating the fund;*

- *correcting material errors made by the manager in administering the investment fund;*
- *negotiating soft dollar arrangements with dealers with whom the manager places portfolio transactions for the investment fund; and*
- *choosing to bring services in-house over using third-party service providers.*

The CSA expect that, in seeking guidance in identifying conflict of interest matters caught by this Instrument, among the factors the manager will look to for guidance to identify conflict of interest matters will be industry best practices. However, the CSA also acknowledge that each manager will need to consider the nature of its investment fund operations in determining a conflict of interest matter.

2. The CSA expect the IRC's recommendation to state a positive or negative response as to whether they view the proposed action as achieving a fair and reasonable result for the investment fund.

3. For a proposed action in a conflict of interest matter under this section that is prohibited or restricted by securities legislation (but not specified in subsection 5.2(1)), a manager will still need to seek exemptive relief from the securities regulatory authorities.

4. Subsection (2) recognizes that, in exceptional circumstances, the manager may decide to proceed with a proposed course of action despite a negative recommendation from the IRC. In such instances, subsection (2) requires the manager to notify the IRC before proceeding with the action. If the IRC determines that the proposed action is sufficiently important to warrant notice to securityholders in the investment fund, the IRC has the authority to require the manager to give such notification before proceeding with the action.

The CSA anticipate that the situation of a manager proceeding with a conflict of interest matter, despite a negative recommendation by the IRC, will occur infrequently.

5. The notification referred to in subsection (5) should be filed on the SEDAR group profile number of the investment fund as a continuous disclosure document.

5.4 Standing instructions by the independent review committee

(1) Despite section 5.1, the manager is not required to refer a conflict of interest matter nor its proposed action to the independent review committee if the manager complies with the terms of a standing instruction that is in effect.

(2) For any action for which the independent review committee has provided a standing instruction, at the time of the independent review committee's regular assessment described in subsection 4.2(1),

(a) the manager must provide a written report to the independent review committee describing each instance that it acted in reliance on a standing instruction; and

(b) the independent review committee must

(i) review and assess the adequacy and effectiveness of the manager's written policies and procedures on the matter or on that type of matter with respect to all actions permitted by each standing instruction;

(ii) review and assess the manager's and investment fund's compliance with any conditions imposed by it in each standing instruction;

(iii) reaffirm or amend each standing instruction;

(iv) establish new standing instructions, if necessary; and

(v) advise the manager in writing of all changes to the standing instructions.

(3) A manager may continue to rely on a standing instruction under subsection (1) until such time as the independent review committee notifies the manager that the standing instruction has been amended or is no longer in effect.

Commentary

1. Section 5.4 recognizes that there are certain actions or categories of actions of the manager for which it may be appropriate for the IRC to choose to provide a standing instruction. For example, this may include a manager's ongoing voting of proxies on securities held by the investment fund when the manager has a business relationship with the issuer of the securities, or, a manager's decision to engage in inter-fund trading.

2. The CSA expect that, before providing or continuing a standing instruction to the manager for an action or category of actions, the IRC will have:

- *reviewed the manager's written policies and procedures with respect to the action or category of actions;*
- *requested from the manager or other persons a report or certification to assist in deciding whether to give its approval or recommendation for the action or category of actions under subsection 5.2(1) or 5.3(1), as the case may be;*
- *considered whether a standing instruction for the particular action or category of actions is appropriate for the investment fund; and*
- *established very clear terms and conditions surrounding the standing instruction for the action or category of actions.*

An IRC may consider including in any standing instruction any terms or conditions in prior exemptive relief orders, waivers or approvals obtained from the securities regulatory authorities.

3. *As part of the IRC's review under subparagraph (2)(b)(ii), the IRC is expected to be mindful of its reporting obligation under section 4.5 of this Instrument, which includes notifying the securities regulatory authorities of any instance where the manager, in proceeding with an action, did not meet a condition imposed by the IRC in its approval (this includes a standing instruction).*

4. *This section is intended to improve the flexibility and timeliness of the manager's decisions concerning a proposed course of action in a conflict of interest matter.*

Part 6 Exempted transactions

6.1 Inter-fund trades

(1) In this section

(a) "current market price of the security" means,

(i) if the security is an exchange-traded security or a foreign exchange-traded security,

(A) the closing sale price on the day of the transaction as reported on the exchange upon which the security is listed or the quotation trade reporting system upon which the security is quoted, or

(B) if there are no reported transactions for the day of the transaction, the average of the highest current bid and lowest current ask for the security as displayed on the exchange upon which the security is listed or the quotation trade reporting system upon which the security is quoted, or

(C) if the closing sale price on the day of the transaction is outside of the closing bid and closing ask, the average of the highest current bid and lowest current ask for the security as displayed on the exchange upon which the security is listed or the quotation trade reporting system upon which the security is quoted; or

(ii) for all other securities, the average of the highest current bid and lowest current ask determined on the basis of reasonable inquiry; and

(b) "market integrity requirements" means

(i) if the security is an exchange-traded security, the purchase or sale

(A) is printed on a marketplace that executes trades of the security; and

(B) complies with the market conduct and display requirements of the marketplace, its regulation services provider and securities regulatory authorities; or

(ii) if the security is a foreign exchange-traded security, the purchase or sale complies with the requirements that govern transparency and trading of foreign exchange-traded securities on the foreign exchange or foreign quotation and trade reporting system; or

(iii) for all other securities, the purchase or sale is through a dealer, if the purchase or sale is required to be reported by a registered dealer under applicable securities legislation.

(2) The portfolio manager of an investment fund may purchase a security of any issuer from, or sell a security of any issuer to, another investment fund managed by the same manager or an affiliate of the manager, if, at the time of the transaction

(a) the investment fund is purchasing from, or selling to, another investment fund to which this Instrument applies;

(b) the independent review committee has approved the transaction under subsection 5.2(2);

(c) the bid and ask price of the security is readily available;

(d) the investment fund receives no consideration and the only cost for the trade is the nominal cost incurred by the investment fund to print or otherwise display the trade;

(e) the transaction is executed at the current market price of the security;

(f) the transaction is subject to market integrity requirements; and

(g) the investment fund keeps written records, including

(i) a record of each purchase and sale of securities;

(ii) the parties to the trade; and

(iii) the terms of the purchase or sale

for five years after the end of the fiscal year in which the trade occurred, the most recent two years in a reasonably accessible place.

(3) The provisions of National Instrument 21-101 *Marketplace Operation*, and Part 6 and Part 8 of National Instrument 23-101 *Trading Rules*, do not apply to a portfolio manager or portfolio adviser of an investment fund, or an investment fund, with respect to a purchase

or sale of a security referred to in subsection (2) if the purchase or sale is made in accordance with that subsection.

(4) The inter-fund self-dealing investment prohibitions do not apply to a portfolio manager or portfolio adviser of an investment fund, or an investment fund, with respect to a purchase or sale of a security referred to in subsection (2) if the purchase or sale is made in accordance with that subsection.

(5) The dealer registration requirement does not apply to a portfolio manager of an investment fund, with respect to a purchase or sale of a security referred to in subsection (2) if the purchase or sale is made in accordance with that subsection.

(6) In subsection (5), "dealer registration requirement" has the meaning ascribed to that term in National Instrument 14-101 *Definitions*.

Commentary

1. The term "inter-fund self-dealing investment prohibitions" is defined in section 1.5 of this Instrument. It is intended to capture the prohibitions in the securities legislation and certain regulations of each securities regulatory authority regarding inter-fund trades.

2. This section is intended to exempt investment funds from the prohibitions in the securities legislation and certain regulations that preclude inter-fund trades. It is not intended to apply to securities issued by an investment fund that are purchased by another fund within the same fund family.

The CSA are of the view that this section applies to inter-fund trades between fund families of the same manager provided the purchase or sale is made in accordance with subsection (2).

3. This section is also intended to provide a portfolio manager with a dealer registration exemption, where necessary, for inter-fund trades made in accordance with this section, but will not apply to any other activities of the portfolio manager. The exemption is based on compliance with this Instrument and the limitation of its application to prospectus-qualified investment funds. The CSA note that the Registration Reform project may re-examine this exemption.

4. This section sets out the minimum conditions for inter-fund trades to proceed without regulatory exemptive relief. An IRC may consider including in any approval any terms or conditions in prior exemptive relief orders, waivers or approvals obtained from the securities regulatory authorities.

5. This section does not specify the policies and procedures that a manager must have to effect inter-fund trades. However, the CSA expect the manager's policies to include factors or criteria for

- *allocating securities purchased for or sold by two or more investment funds managed by the manager; and*
- *ensuring that the terms of purchase or sale will be no less beneficial to the investment fund than those generally available to other market participants in arm's-length transactions.*

6. The CSA expect that the IRC may give its approval in the form of a standing instruction under section 5.4, to give the manager greater flexibility to take advantage of perceived market opportunity.

7. Paragraph (2)(c) requires that the market quotations for the transactions be transparent. The CSA expect that if the price information is publicly available from a marketplace, newspaper or through a data vendor, for example, this will be the price. If the price is not publicly available, the CSA expect the investment fund to obtain at least one quote from an independent, arm's-length purchaser or seller, immediately before the purchase or sale.

8. The CSA consider the requirement in paragraph (2)(f) to be a way to facilitate price discovery and integrity. The CSA believe this is essential to well-functioning and efficient capital markets. Subparagraph (1)(b)(iii) is intended to capture, for corporate debt securities, the requirement, if applicable, to report the trade to CanPx, and for illiquid securities, the requirement, if applicable, to report the trade to the Canadian Unlisted Board (CUB).

9. Paragraph (2)(g) sets out the minimum expectations regarding the records an investment fund must keep of its inter-fund trades made in reliance on this section. The records should be detailed, and sufficient to establish a proper audit trail of the transactions.

6.2 Transactions in securities of related issuers

(1) An investment fund may make or hold an investment in the security of an issuer related to it, its manager, or an entity related to the manager, if

(a) at the time that the investment is made,

(i) the independent review committee has approved the investment under subsection 5.2(2); and

(ii) the purchase is made on an exchange on which the securities of the issuer are listed and traded; and

(b) no later than the time the investment fund files its annual financial statements, the manager of the investment fund files with the securities regulatory authority or regulator the particulars of the investment.

(2) The mutual fund conflict of interest investment restrictions do not apply to a mutual fund with respect to an investment referred to in subsection (1) if the investment is made in accordance with that subsection.

(3) In subsection (2), "mutual fund conflict of interest investment restrictions" has the meaning ascribed to that term in National Instrument 81-102 *Mutual Funds*.

(4) In Quebec, Section 236 of the Securities Regulation does not apply to a portfolio adviser or registered person acting under a management contract with respect to an investment referred to in subsection (1) on behalf of an investment fund, if the investment is made in accordance with that subsection.

Commentary

1. *This section is intended to relieve investment funds in Quebec, and mutual funds elsewhere in Canada, from the prohibitions in the securities legislation of each securities regulatory authority that preclude investments in securities of related issuers.*

2. *This section sets out the minimum conditions for purchases to proceed without regulatory exemptive relief. An IRC may consider including in any approval any terms or conditions in prior exemptive relief orders, waivers or approvals obtained from the securities regulatory authorities.*

   The CSA expect that the IRC may give its approval in the form of a standing instruction as described in section 5.4 to allow the manager greater flexibility in its decisions.

3. *This section contemplates that the manager will comply with the applicable reporting requirements under securities legislation for each purchase. The filing referred to in paragraph (1)(b) should be filed on the SEDAR group profile number of the investment fund, as a continuous disclosure document.*

4. *If an IRC gives its approval for the investment fund to purchase securities of an issuer described in this section, and then subsequently withdraws its approval for additional purchases, the CSA will not consider the continued holding of the securities to be subject to subsection 1.2(b) of the Instrument. However, we will expect the manager to consider whether continuing to hold those securities is a conflict of interest matter that subsection 1.2(a) of the Instrument would require the manager to refer to the IRC.*

Part 7 Exemptions

7.1 Exemptions

(1) The securities regulatory authority or regulator may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.

7.2 Existing exemptions, waivers or approvals

Any exemption, waiver or approval under a provision of securities legislation that was effective before this Instrument came into force and that deals with the matters that this Instrument regulates, will expire one year after this Instrument comes into force.

Commentary

1. *The CSA have, in a number of jurisdictions, granted exemptions and waivers from the conflict of interest and self-dealing provisions in securities legislation to permit the manager and/or the investment fund to make investments not otherwise permitted by securities legislation. Some of those exemptions and waivers contained "sunset" provisions that provided for the expiry of the exemption or waiver upon the coming into force of legislation or a CSA policy or rule that effectively provides for fund governance.*

   For greater certainty, the CSA note that the coming into force of section 7.2 of this Instrument will effectively cause <u>all</u> exemptions and waivers that deal with the matters regulated by this Instrument - not just those exemptions and waivers that deal with the matters under subsection 5.2(1) - to expire one year after its coming into force whether or not they contained a "sunset" provision.

Part 8 Effective date

8.1 Effective date

This Instrument comes into force on November 1, 2006.

8.2 Transition

(1) Despite section 8.1, this Instrument does not apply to an investment fund until the earlier of

(a) the date on which the manager provides to the securities regulatory authority or regulator the notification referred to in subsection (4); and

(b) the date one year after this Instrument comes into force.

(2) Despite subsection (1), six months from the date this Instrument comes into force the manager must appoint the first members of the independent review committee under section 3.2 in compliance with this Instrument.

(3) Despite section 4.4, the independent review committee's first report to securityholders must be completed by the 120th day after the end of the first financial year of the investment fund to which this Instrument applies.

(4) A manager of an investment fund must notify the securities regulatory authority or regulator in writing if it intends to comply with this Instrument prior to the expiration of the transition period under subsection (1).

(5) The notification referred to in subsection (4) is satisfied if the notification is made to the investment fund's principal regulator.

Commentary

1. Section 8.2 is intended to address transitional concerns.

The CSA expect that all investment funds will be compliant with this Instrument following the expiry of the transition period under subsection 8.2(1), twelve months after the Instrument is in force. For an investment fund established after the expiry of the transition period, it is expected that the investment fund will be compliant with this Instrument before any purchase order for securities of the investment fund is accepted.

2. Subsection 8.2(2) allows a manager an extra six months from the date this Instrument is in force to appoint the initial members of the IRC.

While a six month transition period exists for the appointment of IRC members, the CSA strongly encourage a timely appointment of the IRC by the manager so that within the twelve month transitional period there is sufficient time for the IRC to adopt its charter, to review the manager's policies and procedures, and to review (subject to manager referral) any existing conflict of interest matters.

The transition period is also intended to give the manager sufficient time to refer existing and new conflict of interest matters to the IRC for its review and determination.

3. The CSA anticipate a manager or investment fund may wish to rely on the Instrument before the expiry of the transition period so that it may proceed with IRC approval for an otherwise prohibited or restricted transaction in securities legislation described in subsection 5.2(1). This may not occur unless there is complete compliance with the Instrument. Subsection (4) is intended to assist the CSA in knowing which managers of investment funds are proceeding in this manner before the expiry of the transition period.

4. *For investment funds established before the expiry of the transition period, the CSA expect the manager to establish policies and procedures on any conflict of interest matters (if they do not already have them), and to refer to the IRC these policies and procedures and any decisions related to such matters prior to the end of the transition period.*

5. *The CSA do not consider a manager's organization of an investment fund (such as the initial setting of fees or the initial choice of service providers) to be subject to IRC review, unless the manager's decisions give rise to a conflict of interest concerning the manager's obligations to existing investment funds within the manager's fund family. However, the CSA expect the manager will establish policies and procedures for any conflict of interest matters arising from the investment fund's organization or otherwise, and refer to the IRC these policies and procedures and any decisions related to such matters.*

   It is anticipated that the manager will wish to engage the IRC early in the establishment of the investment fund to ensure the IRC is adequately informed of potential new conflicts of interest.

6. *An investment fund, whether established before or after the date this Instrument comes into force, has a total transition period of up to twelve months from the date the Instrument comes into force to comply with the Instrument. Only if the manager of an investment fund intends to comply with the Instrument in its entirety before the expiry of the transition period is the notice in subsection (4) required.*

7. *It is expected that investment funds will incorporate any new disclosure obligations arising out of this Instrument as part of their annual prospectus renewal or continuous disclosure filing following the expiry of the transition period.*

8. *The CSA do not consider the expenses incurred by existing investment funds in establishing an IRC under this Instrument to be caught by section 5.1 of NI 81-102. We do not view section 5.1 as intending to capture the costs associated with compliance by an investment fund with new regulatory requirements.*

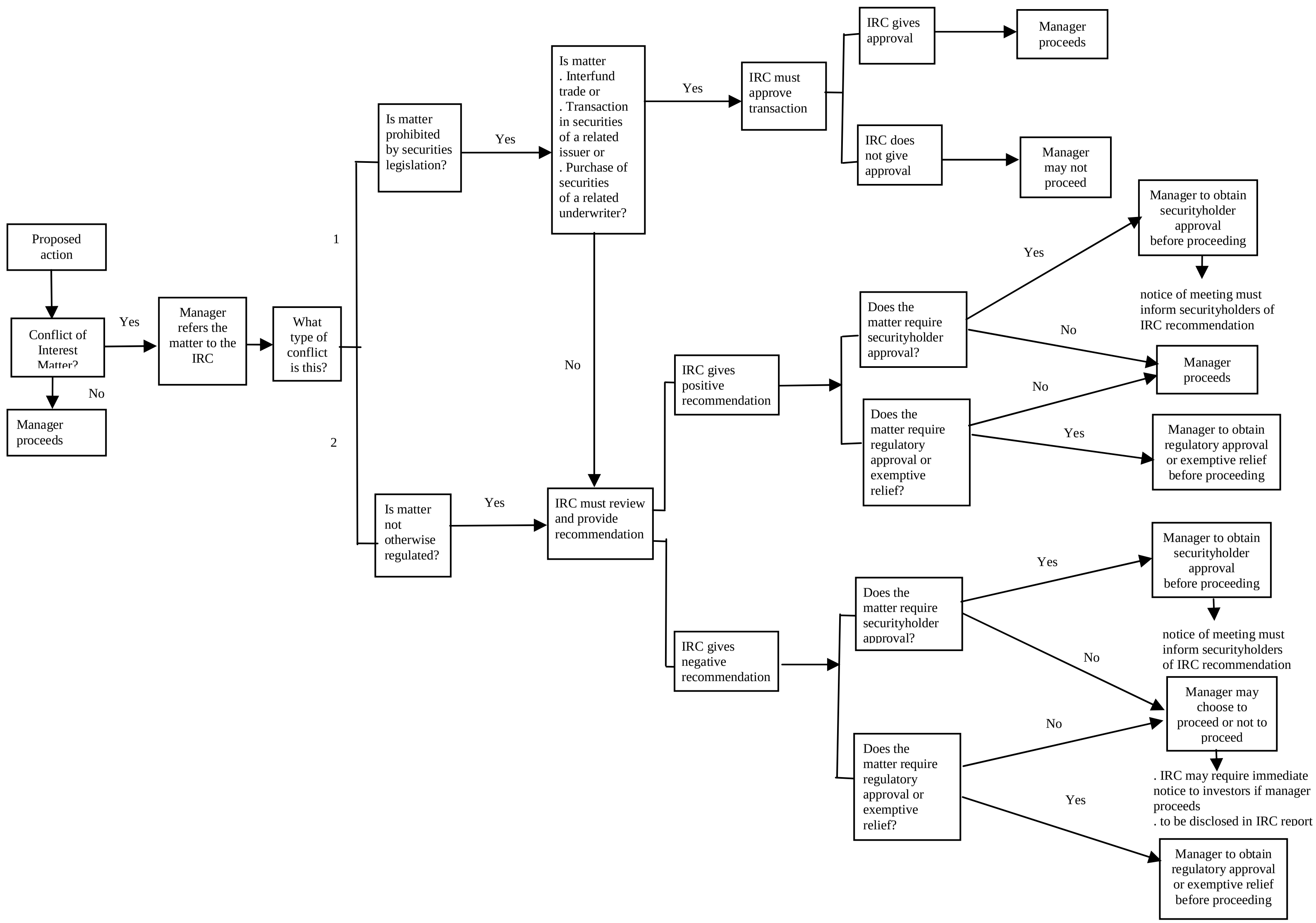
APPENDIX A – CONFLICT OF INTEREST OR SELF-DEALING PROVISIONS

JURISDICTION	SECURITIES LEGISLATION REFERENCE
Alberta	Part 15 – Insider Trading and Self-Dealing of the *Securities Act* (Alberta)
British Columbia	Part 15 – Self-Dealing of the *Securities Act* (British Columbia)
Manitoba	Part XI – Insider Trading of the *Securities Act* (Manitoba)
Newfoundland and Labrador	Part XX – Insider Trading and Self-Dealing of the *Securities Act* (Newfoundland and Labrador)
New Brunswick	Part 10 – Insider Trading and Self-Dealing of the *Securities Act* (New Brunswick)
Nova Scotia	Sections 112 – 128 of the *Securities Act* (Nova Scotia)
Ontario	Part XXI – Insider Trading and Self-Dealing of the *Securities Act* (Ontario)
Quebec	Section 236 of the *Securities Regulation* (Quebec)
Saskatchewan	Part XVII – Insider Trading and Self-Dealing – Mutual Funds of the *Securities Act* (Saskatchewan)
Alberta, British Columbia, Manitoba, Newfoundland and Labrador, New Brunswick, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan and Yukon	Part 4 of National Instrument 81-102 *Mutual Funds*

APPENDIX B – INTER-FUND SELF-DEALING CONFLICT OF INTEREST PROVISIONS

JURISDICTION	SECURITIES LEGISLATION REFERENCE
Alberta	Section 192(2)(b) of the *Securities Act* (Alberta) Section 31(6) of ASC Rules
British Columbia	Section 127(1)(b) of the *Securities Act* (British Columbia)
Newfoundland and Labrador	Section 119(2)(b) of the *Securities Act* (Newfoundland and Labrador) Section 103(6) of Reg. 805/96
New Brunswick	Section 144(1)(b) of the *Securities Act* (New Brunswick) Section 11.7(6) of Local Rule 31-501 Registration Requirements
Nova Scotia	Section 126(2)(b) of the *Securities Act* (Nova Scotia) Section 32(6) of the General Securities Rules
Ontario	Section 118(2)(b) of the *Securities Act* (Ontario) Section 115(6) of Reg. 1015
Prince Edward Island	Section 38.1(6) of Securities Act Regulations
Quebec	Section 236 of the *Securities Regulation* (Quebec)
Saskatchewan	Section 127(2)(b) of the *Securities Act* (Saskatchewan) Section 27(6) of Securities Regulations

APPENDIX A to COMMENTARY — DECISION TREE



NOTICE OF ONTARIO SECURITIES COMMISSION RULE 81-802 IMPLEMENTING NATIONAL INSTRUMENT 81-107 INDEPENDENT REVIEW COMMITTEE FOR INVESTMENT FUNDS AND COMPANION POLICY 81-802CP IMPLEMENTING NATIONAL INSTRUMENT 81-107 INDEPENDENT REVIEW COMMITTEE FOR INVESTMENT FUNDS

Introduction

The Commission has, under section 143 of the *Securities Act* (Ontario) (the Act), made Rule 81-802 *Implementing National Instrument 81-107 Independent Review Committee for Investment Funds* (the Implementing Rule) and adopted Companion Policy 81-802CP. The Implementing Rule was delivered to the Minister of Government Services on July 28, 2006**.** If the Minister approves the Implementing Rule, or does not reject it or return it for further consideration, it will come into force on November 1, 2006**.** Companion Policy 81-802CP will become effective at the same time as the Implementing Rule.

Substance and Purpose

The Implementing Rule is a local Ontario rule implementing National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107) in Ontario. Companion Policy 81-802CP to the Implementing Rule provides information relating to the manner in which the Commission interprets or applies certain provisions of the Implementing Rule and NI 81-107.

Summary

Section 3.1 of the Implementing Rule designates the independent review committee (the IRC) under NI 81-107 and a manager of a non-redeemable investment fund as market participants under the Act. This is to ensure that the books, records and documents required to be kept by the IRC and the manager of a non-redeemable investment fund may be requested by the Ontario Securities Commission under Part VII of the Act.

Section 3.2 of the Implementing Rule provides that the definition of “manager” in NI 81-107 means the definition of “investment fund manager” under the Act.

Section 3.3 of the Implementing Rule provides that the standard of care and fiduciary duty required of a manager of a mutual fund in section 2.1 of NI 81-107 is the same standard of care and fiduciary duty imposed under section 116 of the Act. While the standard of care and fiduciary duty for a manager of a mutual fund is the same as that under the Act, the intention for including section 2.1 in NI 81-107 is not to be duplicative with the Act, but to harmonize the standard of care and fiduciary duty obligations for all managers of investment funds subject to NI 81-107, and to introduce for the first time a statutory standard of care and fiduciary duty for managers of investment funds in some jurisdictions.

NI 81-107 addresses certain requirements that are also dealt with in the Act. The Act cannot easily be amended to remove provisions which either duplicate or vary those found in NI 81-107. Accordingly, the Companion Policy clarifies that a manager of a mutual fund subject to NI 81-107 need only refer to section 2.1 of NI 81-107 for the Ontario securities law requirement regarding the standard of care and fiduciary duty it is required to meet and does not have to refer to section 116 of the Act; and investment funds subject to NI 81-107 should refer to sections 6.1 and 6.2 of NI 81-107 to determine if it provides for exemptions from some of the prohibitions in Part XXI of the Act, as permitted under sections 121.1 and 121.4 of the Act.

Background and Comments

On May 27, 2005, we published for comment the second version of NI 81-107 and the first version of the proposed Implementing Rule. The comment period expired in August 2005. We received one comment on the proposed Implementing Rule. No material changes have been made to the proposed Implementing Rule.

On the same date as the publication of this Notice, the Canadian Securities Administrators (the CSA) are publishing a Notice of the making of NI 81-107. For a summary of the changes made to NI 81-107, and of the comment received on the proposed Implementing Rule, please refer to that CSA Notice.

Questions may be referred to any of:

Rhonda Goldberg
Assistant Manager, Investment Funds
Ontario Securities Commission
Tel: (416) 593-3682
Fax: (416) 593-3699
e-mail: rgoldberg@osc.gov.on.ca

Susan Silma
Director, Investment Funds
Ontario Securities Commission
Tel: (416) 593-2303
Fax: (416) 593-3699
Email: ssilma@osc.gov.on.ca

Susan Thomas
Legal Counsel, Investment Funds
Ontario Securities Commission
Tel: (416) 593- 8076
Fax: (416) 593-3699
e-mail: sthomas@osc.gov.on.ca

Doug Welsh
Legal Counsel, Investment Funds
Ontario Securities Commission
Tel: (416) 593-8068
Fax: (416) 593-3699
e-mail: dwelsh@osc.gov.on.ca

ONTARIO SECURITIES COMMISSION RULE 81-802 IMPLEMENTING NATIONAL INSTRUMENT 81-107 INDEPENDENT REVIEW COMMITTEE FOR INVESTMENT FUNDS

PART 1 – DEFINITIONS AND INTERPRETATION

1.1 Definition - In this Rule, "NI 81-107" means National Instrument 81-107 *Independent Review Committee for Investment Funds*.

1.2 Interpretation - A term used in this Rule that is defined or interpreted in NI 81-107 has the meaning ascribed to it in NI 81-107.

PART 2 – APPLICATION

2.1 Application -This Rule applies to an investment fund that is a reporting issuer.

PART 3 – INTERRELATIONSHIP WITH LEGISLATION

3.1 Designation as market participant

(1) An independent review committee is designated as a market participant for the purposes of the Act.

(2) A manager of a non-redeemable investment fund is designated as a market participant for the purposes of the Act.

3.2 Definition of manager – In NI 81-107 “manager” means an “investment fund manager” under the Act.

3.3 Standard of care for manager – In NI 81-107, the standard of care and fiduciary duty required of a manager of a mutual fund in order to meet its obligation under NI 81-107 is the same standard of care and fiduciary duty imposed under section 116 of the Act.

PART 4 – EFFECTIVE DATE

4.1 Effective date – This Rule comes into force on November 1, 2006.

COMPANION POLICY 81-802CP TO ONTARIO SECURITIES COMMISSION RULE 81-802 IMPLEMENTING NATIONAL INSTRUMENT 81-107 INDEPENDENT REVIEW COMMITTEE FOR INVESTMENT FUNDS

1.1 Introduction – The purpose of this Companion Policy is to provide information relating to the manner in which the Ontario Securities Commission (the Commission) interprets or applies certain provisions of Commission Rule 81-802 *Implementing National Instrument 81-107 Independent Review Committee for Investment Funds* (the Implementing Rule) and National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107).

1.2 Interrelationship between NI 81-107 and the *Securities Act* (Ontario) (the Act) – NI 81-107 is intended to impose a minimum, consistent standard of governance for all publicly offered investment funds by introducing the requirement for a fully independent advisory body, the independent review committee (the IRC), charged with overseeing all conflict of interest matters faced by the manager in the operation of an investment fund. As a result, NI 81-107 sometimes repeats (without any substantive change) certain requirements that are also dealt with in the Act under Part XXI *Insider Trading and Self Dealing*.

The cumulative effect of NI 81-107 and the Implementing Rule is that the standard of care and fiduciary duty required under section 2.1 of NI 81-107 is the same standard of care and fiduciary duty imposed under section 116 of the Act for a manager of a mutual fund, and sections 6.1 and 6.2 of NI 81-107 provide for exemptions from some of the prohibitions in Part XXI of the Act, as permitted under sections 121.1 and 121.4 of the Act. A manager of a mutual fund that is a reporting issuer can and should therefore refer to section 2.1 of NI 81-107 in place of section 116 of the Act, and investment funds or mutual funds, respectively, should refer to sections 6.1 and 6.2 of NI 81-107 to see if the exemptions from the prohibitions contained in Part XXI of the Act are met.

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