

1.1.2 OSC Staff Notice 81-710 – Approvals for Change in Control of a Mutual Fund Manager and Change of a Mutual Fund Manager under National Instrument 81-102 Mutual Funds

OSC STAFF NOTICE 81-710

**APPROVALS FOR CHANGE IN CONTROL OF A MUTUAL FUND MANAGER
AND CHANGE OF A MUTUAL FUND MANAGER
UNDER NATIONAL INSTRUMENT 81-102 MUTUAL FUNDS**

Purpose

This notice sets out the views of staff of the Ontario Securities Commission (OSC Staff) on circumstances that may cause OSC Staff to view a proposed transaction or relevant series of transactions for which regulatory approval in respect of a mutual fund has been sought under Part 5 of National Instrument 81-102 *Mutual Funds* (NI 81-102) as requiring securityholder approval.

Change in Control of a Manager vs. Change of Manager

A change in control of the manager of a mutual fund requires the prior approval by the securities regulatory authorities under subsection 5.5(2) of NI 81-102. A change in the manager of a mutual fund requires prior approval by the securities regulatory authorities under paragraph 5.5(1)(a) of NI 81-102 and, unless the new manager is an affiliate of the current manager, prior securityholder approval pursuant to paragraph 5.1(b) of NI 81-102.

OSC Staff have seen an increasing number of applications for approval of a change in control of the manager of a mutual fund that, upon further examination of the substance of the proposed transaction or relevant series of transactions and its impact on the securityholders of the mutual fund, appear to OSC Staff to make it appropriate for approval by the securities regulatory authorities to be provided on the basis that there is a change in the manager of the mutual fund requiring securityholder approval.

In our review of applications for regulatory approval for a change in control of the manager of the mutual fund, OSC Staff will consider the intended final outcome for the securityholders of the mutual fund. We may ask the applicant for submissions in order to ascertain whether the result for securityholders of the proposed transaction or relevant series of transactions is effectively a change of the manager, rather than a change in control of the manager. When examining the substance of a proposed transaction or relevant series of transactions, OSC Staff will raise questions where it appears the transaction or series of transactions has been structured to effect a change of manager of the mutual fund without securityholder approval.

Generally, this issue will arise if a proposed transaction or relevant series of transactions is structured in one of the following ways:

- (i) the manager of a mutual fund amalgamates with another investment fund manager; or
- (ii) if, immediately following a change in control of the manager of the mutual fund, a change of manager will occur where the new manager will be the entity that acquired control of the original manager or an affiliate of such entity; or
- (iii) when it is contemplated that within a foreseeable period of time following a change in control of the manager of the mutual fund, a change of manager of the mutual fund will occur where the new manager will be the entity that acquired control of the original manager or an affiliate of such entity.

Further Information

Issuers and their counsel are encouraged to contact OSC Staff at an early stage in the planning of any transaction that may give rise to any questions concerning the issue discussed in this Notice.

Questions

If you have any questions, please refer them to:

Rhonda Goldberg
Deputy Director, Investment Funds Branch
Ontario Securities Commission
Tel: (416) 593-3682
Email: rgoldberg@osc.gov.on.ca

Irene Lee
Legal Counsel, Investment Funds Branch
Ontario Securities Commission
Tel: (416) 593-3668
Email: ilee@osc.gov.on.ca

Carina Kwan
Legal Counsel, Investment Funds Branch
Ontario Securities Commission
Tel: (416) 593-8052
Email: ckwan@osc.gov.on.ca

May 14, 2010