



THE INVESTMENT FUNDS INSTITUTE OF CANADA
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA
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June 9, 2000

Purdy Crawford
Osler, Hoskin & Harcourt LLP
Barristers & Solicitors
Box 50
1 First Canadian Place
Toronto, ON
M5X 1B8

Dear Mr. Crawford,

**Re: Request for Comments Regarding Five Year Review of Securities Legislation
in Ontario (Your Matter Number: 1015558)**

We are writing in response to the request for comments by the Securities Review Advisory Committee (the "Committee") regarding the Five Year Review of Securities Legislation in Ontario (the "Five Year Review".)

The Investment Funds Institute of Canada ("IFIC") is the national association of the Canadian Investment Funds Industry, representing nearly 100% of the total mutual fund assets under management in Canada. IFIC's membership is comprised of fund managers, retail distributors and affiliates from the legal, accounting and other professions.

We are pleased for the opportunity to provide input to the Committee on the Five Year Review and applaud the Committee's efforts to ensure securities regulation remains relevant and justified on compelling public policy grounds. We have already provided the Ontario Securities Commission (the "Commission") with detailed comments regarding its Statement of Priorities for the fiscal year ending March 31, 2001 and understand that the Committee is interested in obtaining general issues for consideration in the Five Year Review. As such, our comments are not substantive, but are designed instead to express our views on the issues which we believe are important for the Committee to examine. With this, the following comments relate to the published Issues List and also to additional issues that we feel should be addressed by the Committee.

SECURITIES REVIEW ADVISORY COMMITTEE PARTICIPANTS

We note that there are no reporting issuers participating on the Committee. Given the importance of all reporting issuers, including mutual funds, and the overall investment

funds industry to both investors and to the economy of Ontario, we recommend that this stakeholder group be included on the Committee, including representatives of both mutual funds and corporate issuers.

MANDATE OF COMMISSION

Further to the discussion of the Mandate and Role of the Commission at point #39, we refer to subsection (2) of section 61 the *Securities Act* (Ontario)(the “Act”). This subsection makes clear that disclosure regulation is at the foundation of the Commission’s mandate to regulate issuers. However, through the use of occasionally subjective and sometimes discretionary policy making, the mandate appears to have gone beyond that of investor protection based on Justice Douglas’ sunshine metaphor, and has moved wholesale into merit regulation.

One example of this is the regulation of fund of fund structures. Correspondence with the Canadian Securities Administrators (“CSA”) on this issue has been ongoing for more than seven years. On numerous occasions within that time, IFIC has proposed a regulatory structure for fund on fund arrangements, which addresses the regulatory concerns of the CSA while allowing an important investment vehicle to exist to serve investors’ needs. The SEC has had fund of fund structures regulated by defined disclosure requirements. The Canadian mutual fund industry however, after years of discussion, is still dependent on the granting of discretionary relief by the Commission. Full disclosure of these structures, and any relief granted to permit them, has always been given in the prospectus, and over the last few years, the consistency of the relief granted has created a sense in the mutual funds community that “non-rule rules” had effectively been developed by the Commission. Recently however, these standardized parameters applicable to fund of funds are being reconsidered, although the reasons for this reconsideration have not been identified, and this has resulted in some funds which have been “refused” discretionary relief and receipts despite using structures for which other funds have received discretionary relief and receipts.

IFIC is concerned with the use of discretion in the exercise of the Commission’s powers, and believes that this question raises significant issues which need to be addressed in this context. There is a significant amount of ad hoc decision-making, and this use of discretion has lead to inconsistency and, in an area in which rules are theoretically standardized, to a very uneven playing field.

RIGHTS OF WITHDRAWAL AND RESCISSION

In December 1998, IFIC forwarded a submission to the Canadian Securities Administrators Mutual Fund Committee, requesting that they address the inconsistency

of the rights of withdrawal and rescission granted to mutual fund investors under provincial and territorial securities legislation. The submission recommended that securities legislation in all jurisdictions be amended to grant a single, consistent, right to investors across the country, which would replace the existing rights of withdrawal and rescission. The submission also provided a detailed description of the features of this proposed single right of rescission.

IFIC has not received a response to the submission, nor to further correspondence that was forwarded on this issue. We feel this is an important issue for the Canadian investor and therefore worthy of inclusion on the Committee's Issues List.

PRUDENT PERSON INVESTMENT STANDARD

Most managed industries in Canada, like the pension industry, have evolved from a "legal for life" investment standard to a "prudent person" investment standard. Section 116 of the Act imposes a standard of care for managers of mutual funds. Accordingly, we believe that a prudent person standard should be considered as a replacement to the current investment restrictions indicated in National Instrument 81-102, Part 2, and feel strongly that this issue be considered by the Committee. Adopting the standard would eliminate the need for ad hoc relief from investment restrictions and create more flexibility in the management of a fund's portfolio, and the standard of care provision in the Act would ensure the necessary level of prudence would be exercised in management of the funds.

Canada has one of the largest mutual fund industries in the world and Toronto has the third largest number of Chartered Financial Analysts in the world. These two factors are evidence of the established mutual fund industry in Ontario. It is because of this maturity of the industry that securities legislation should evolve to reflect the prudent person investment standard as the accepted standard of care for managers of mutual funds.

DEFINED CONTRIBUTION PLANS

The introduction of mutual funds to Defined Contributions plans brings about the necessity for clear definition as to which jurisdiction governs these plans and which regulatory standards apply. We recommend that the Committee consider including Defined Contribution plans on the Issues List.

CONCLUSION

We appreciate the opportunity to comment at this stage on the issues which the investment funds industry believes the Committee should focus, and look forward to providing substantive comment on the issues themselves as the Five Year Review

proceeds. Should you have any questions about these comments, please direct them to John Mountain, Vice President, Regulation at (416) 363-2150 ext. 271.

Yours truly,

Honourable Thomas A. Hockin
President & Chief Executive Officer

cc: John Mountain
All IFIC Member Senior Officers
IFIC Regulatory Steering Committee