

MEMO# 15431

December 6, 2002

PROPOSALS FOR MUTUAL FUND REGULATION IN BRITISH COLUMBIA

[15431] December 6, 2002 TO: INTERNATIONAL COMMITTEE No. 85-02 RE: PROPOSALS FOR MUTUAL FUND REGULATION IN BRITISH COLUMBIA The British Columbia Securities Commission (BCSC) recently published for comment a comprehensive package of proposed mutual fund regulations. The main elements of the report are briefly summarized below. A portion of the report proposing the rules is attached.¹ There are three main sets of proposals relating to mutual funds in British Columbia: 1. Disclosure. The current prospectus-based disclosure system for mutual funds would be replaced by a system based on "continuous disclosure." Mutual funds would file an annual information form (AIF) and keep all significant information up to date in the market at all times. Mutual funds could sell to investors based on this record of continuous disclosure. A point-of-sale document, such as a prospectus, would be permitted but not required. 2. Business Conduct and Product Regulation. Codes of conduct would be mandated under British Columbia's Securities Rules for mutual fund companies, advisers and mutual fund dealers. These codes would substitute general principles and guidance for detailed, complex and prescriptive rules governing business conduct and product regulation. For example, the first two guidelines under Principle 1 of the Code (on standard of care and integrity) would replace a statutory prohibition on insider trading (Section 128 of the BC Securities Act). These guidelines simply require the persons covered by the Code to "exercise the powers and discharge the duties related to your management of a mutual fund honestly, in good faith and in the best interests of the mutual fund," and "exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances."² Chapter 5 of the report provides a table of regulatory provisions that would be replaced under the new proposals. 3. Foreign Funds. Foreign regulated funds that do not solicit investors in Canada would be allowed to sell funds to Canadian investors without complying with 1 The full report is available at http://www.bcsc.bc.ca/bcproposals/Mutual_Fund_Proposals.pdf. 2 See pages 15-17 of the report. 2 Canadian requirements, as long as they act in accordance with applicable foreign requirements and make certain disclosures. Currently, foreign mutual funds selling securities in Canada must either file a prospectus and comply with product regulation requirements of Canadian National Instrument 81-102 or rely on an available exemption. If a foreign mutual fund files a prospectus and becomes a reporting issuer, it is also subject to Canadian continuous disclosure requirements. The BCSC noted that these current requirements impose additional costs on foreign funds and create a barrier to entering the Canadian market, which reduces investment opportunities for Canadians. The page from the report relating to this proposal is attached. Comments on the BCSC proposal are due January 31, 2002. Please let us know, by December 31, 2002, if you think this is a matter on which the Institute should comment. Robert C. Grohowski Associate Counsel Attachment Attachment (in .pdf format)

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