



February 14, 2025

VIA EMAIL

The Secretary
Ontario Securities Commission
20 Queen Street West 22nd Floor
Toronto, Ontario M5H 3S8
E-mail: comments@osc.gov.on.ca

Re: Ontario Securities Commission Consultation Paper 81-737 – Opportunity to Improve Retail Investor Access to Long-Term Assets through Investment Fund Product Structures (the “Consultation”)

The Canadian Advocacy Council of CFA Societies Canada (the “CAC”)¹ appreciates the opportunity to provide the following specific responses to the Consultation questions listed below.

As a general comment, we believe that securities regulatory authorities in Canada would benefit from additional and ongoing information gathering in the private markets, perhaps through examining whether the wholesale carve-out of private asset (such as venture capital, private debt, and private equity funds) funds management from oversight by securities regulation still serves its intended purposes, particularly given regulatory developments in comparable jurisdictions (such as the United States) that have moved managers of these funds somewhat (if not entirely in certain instances and jurisdictions) inside the regulatory perimeter. We believe securities regulatory authorities in Canada would benefit in making well-informed proposals on private markets from greater familiarity with these markets, the ongoing work of market participants in these areas, and asset class-specific developments.

Q1. Do you agree that retail investors could benefit from increased access to Long-Term Assets? Please explain.

While we agree in theory that retail investors could benefit from increased access to high-quality (and this distinction is important) Long-Term Assets, we query whether the existing proposal is a response to an investor-driven concern or an identified capital formation issue.

¹ The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 21,000 Canadian CFA charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

As the global association of investment professionals, CFA Institute sets the standard for professional excellence and credentials. The organization is a champion of ethical behaviour in investment markets and serves as the leading source of learning and research for the investment industry. CFA Institute believes in fostering an environment where investors' interests come first, markets function at their best, and economies grow. With more than 200,000 charterholders worldwide across 160 markets, CFA Institute has ten offices and 160 local societies. Find us at www.cfainstitute.org or follow us on LinkedIn and X at @CFAInstitute.



We would have preferred to first review a data-driven summary of research findings and cost-benefit analysis that could have provided relevant background information on returns and risks of a reasonable range of private assets, substantiate support and investor demand for this initiative, as well as statistics indicating that retail investors in Ontario have historically had lower risk-adjusted returns than otherwise comparable investors with exposure to these private/long-term assets. This data would have helped us and other stakeholders craft informed responses to the remaining questions posed in the Consultation. In particular, data addressing the specific proposed policy recommendations and whether access to investment structures like the proposed Ontario Long-Term Fund (“**OLTF**”) would drive positive outcomes for the category of investors noted above would be helpful.

As an example, the Consultation references similar investment vehicles in other jurisdictions. The notice could have included information such as whether the equivalent of non-accredited retail investors in the United Kingdom or European Union have positive views on/experiences with the comparative investment structures, their returns, the degree of demand and investment, and whether there were any widespread liquidity concerns or complaints from investors in the jurisdiction. There could also have been some comparative analysis of the features of these vehicles and the OLTF features proposed by the OSC. Some analysis would also have been helpful as to the quality of fund managers and assets seeking retail investor investment, and how this data informed the OSC’s proposals.

We know from a variety of available data sources^{2,3} that dispersion of fund and manager returns across the private asset classes considered in this Consultation Paper is far wider than that of other asset classes typically accessed by non-accredited retail investors in Ontario, and that the benchmarking and performance measurement of these funds and managers is more complex. We are curious as to the assumptions of returns and risk taken from these datasets in forming the OSC’s policy views, as we believe mean or median historical fund and manager returns may not be a reasonable expectation for replicable retail fund returns nor a sound basis for policy actions, given the noted wide dispersion of returns, the specific and significant effects of manager/fund selection in these asset classes, and fees⁴ on measuring performance of these funds.

One additional potential concern we have about widespread retail exposure to long-term assets is that investors with limited investable assets may choose or be advised to invest in these vehicles, and that the potential contemplated safeguards (such as the use of risk warnings and summaries) may not be sufficient. We would encourage the OSC to consider if a simple financial eligibility test or restriction on percentage of investable assets would provide an additional safeguard for investors while not significantly

² Hamilton Lane, “2024 Market Overview”, Online: [Performance - 2024 Market Overview | Hamilton Lane](#)

³ See Slide 9, JPMorgan Asset Management, “Guide to Alternatives, 4Q2024”, Online: [Guide to Alternatives | J.P. Morgan Asset Management](#)

⁴ “Performance of Private Equity Funds”, Ludovic Phalippou and Oliver Gottschalg, Available online at SSRN: [Performance of Private Equity Funds](#)

compromising the goal of increasing access to these types of assets for non-accredited retail investors.

Q2. Could investment fund product structures facilitate increased retail investor allocation to Long-Term Assets, while mitigating some of the risks of holding these illiquid assets? Please explain.

While we have reservations about other aspects of the proposals in the Consultation Paper, we are of the overarching and on-balance view that increased retail access to Long-Term Assets is better facilitated through regulated fund structures involving professional and experienced fund management, subject to securities regulation, than through broadened access to direct investments into Long-Term Assets for non-accredited retail investors.

We do however believe that regulatory expectations of managers of funds holding Long-Term Assets should be tuned to the unique characteristics of these asset classes (which vary even between private asset classes considered by this Consultation Paper), and should consider aspects such as acceptable use of subscription funds (i.e. for investment vs. the payment of pending redemptions – particularly in instances of gating or deferred/financed redemptions). There should also be recognition of the need for management of conflicting interests between the fund manager and the interests of different cohorts of investors (depending on time/class/series of investment) – which themselves can be far from homogenous in many circumstances.

Q3. What else could be done to increase retail investor interest in specific types of Long-Term Assets?

We're not of the view that this should be an objective of the Consultation Paper, and do not believe this is well-articulated as consistent with our understanding of the legislative mandate and purposes of the Ontario Securities Commission. Retail investor interest in specific types of these assets or any other asset for investment purposes should be a function of their investment attractiveness on a risk-return basis, taking account of client-specific circumstances and preferences through the advice process.

Q6. Please explain your views on each of the following overview elements:

(ii) OLTFS being subject to their own unique regulatory requirements.

We have no issue with this concept, and believe that the unique features and risks of Long-Term Assets when considered for investment by retail investors are deserving of fit-for-purpose regulatory requirements.

(iv) The impact of OLTFS being only distributed to Ontario investors.

We would encourage the OSC to provide additional information on what the OSC's position is on investors who migrate from the province following their initial investment. Additionally, we would encourage the OSC to outline its position on whether other jurisdictions should consider allowing the offering across Canada, and whether that



would better align with various stated goals of financing projects within a particular province.

(vi) The proposed CIV requirement.

We are unclear as to the policy reasons for requiring a Cornerstone Investor in each CIV, and are skeptical as to the attractiveness of such an investment to a prospective Cornerstone Investor (particularly one without conflicted incentives), given the unattractive restrictions on exit liquidity, and the inherent challenges of investing alongside a collective of retail investors with a potentially unstable investment horizon, subject to potential liquidity needs. We believe this provision while well-intended requires additional examination and policy work.

Q8. Do you agree that these are threshold issues? Are there any other threshold issues? Please explain.

We agree with the identification of these threshold issues, and would add necessary portfolio management proficiency, client reporting obligations/demands/conflicts, and fund governance considerations that are unique to private assets as additional topics for further consideration.

Q13. Should OLTFs only be required to calculate NAV as often as the frequency of distributions and redemptions in addition to financial reporting periods? Please explain.

Yes, this should be a minimum expectation. We also believe this is one such fund design consideration deserving of additional fund-level governance structure and oversight considerations than are typical of funds containing relatively easily-priced assets.

Q14. Please explain if any of the following mitigate the difficulties of calculating fair and reasonable NAVs for Long-Term Assets:

(i) Experienced IFMs.

IFMs and portfolio management teams experienced in the operation of investment vehicles containing Long-Term Assets is one potential mitigation, though we would point out the substantive differences between the governance issues in these asset classes relative to those present in the management and oversight of other existing types of investment funds, and would not look at experience in management of other types of investment funds as necessary mitigative of risks relating to Long-Term Asset funds.

(ii) Independent boards of directors (or an independent review committee with enhanced supervisory powers additional to reviewing conflict of interests).

A fund board with empowered and independent fiduciary directors are one potential structural control to mitigate a wide variety of fund governance concerns. We are *not* of



the view that any iteration of the independent review committee as currently constituted adequately solves for these concerns.

(iii) Cornerstone Investors.

We do not believe this is an effective control as any Cornerstone Investor is in pursuit of their own interests, which may (and likely would) come into conflict with the interests of other investors (such as the retail investors in the fund) in the CIV, which may not be otherwise adequately represented.

Q16. Please provide your views on whether, given its unique purpose and structure, an OLTF should only have a majority-independent board of directors and no independent review committee or alternatively, whether it should have an independent review committee with enhanced supervisory powers additional to reviewing conflict of interests. Also, could an OLTF also be organized as another type of entity, such as a trust with a majority-independent board of trustees?

We believe that the issues raised in this section should be cause for a broader conversation about whether current legally available corporate/organizational structures in Ontario are well-suited to the needs identified here, and whether there should be further investigation and potentially dialogue with legislators about the need for corporate structures that better address the unique governance, organizational, tax and other needs of investment funds (of all types) in Ontario. It is our view that jurisdictions in Canada (including Ontario) have lagged global innovations in this area, and that a broader dialogue is overdue. With that said, we don't have fundamental objection to allowance for utilizing currently-available legal structures in Ontario for an OLTF, such as a limited partnership or trust with a majority-independent board of trustees (or board of the partnership's general partner in case of use of a limited partnership).

Within the confines of the question, it's our view that a majority-independent board of directors better addresses these (and other) issues than any 'enhanced' independent review committee, as the fundamental fiduciary duty must be to fund unitholders and be free of the conflicts that are incumbent with structural aspects of the IRC, and for the other reasons cited above. CIV governance is also of primary concern, and we believe is better addressed via this governance structure at the OLTF level.

Q17. Are there other monitoring, review and governance requirements the Proposal should consider? Please explain.

We believe the OSC should publish additional information regarding how the relationship between an OLTF, its invested CIVs, and any given Cornerstone Investor is anticipated to be structured to provide sufficient safeguards to retail investors and to address alignment of interests between other CIV investors and investors in the OLTF, and the interests of the IFM and PM. It is noted in the Consultation that the exit rights of Cornerstone Investors would be proportional to the exit rights of OLTFs and that there may be restrictions on the ability of Cornerstone Investors to exit an investment in a collective investment vehicle ("CIV"). It would also be helpful to have additional information on the support of this proposal from investors who would qualify as a



Cornerstone Investor as to the feasibility of the redemption and other restrictions, and the resulting attractiveness of investing into a CIV.

If Cornerstone Investors' function is to provide comfort regarding the due diligence performed on an investment (despite not owing any duties to the investors in an OLTF), does the OSC envision that both the selection/purchase and exit of an investment require an agreement between the manager of the OLTF and the Cornerstone Investor not to exit an investment without consent and/or on similar terms? We have similar questions with respect to the level of co-operation that will be required with respect to governance, reporting/transparency, valuation and NAV requirements that will be imposed on the OLTF, and by extension, the CIVs, and whether these will be specified through regulation at all levels or be contractually determined, as is generally the practice in these markets today, which would advantage the largest and most informed/resourced investors in the CIV. We also have questions as to how the costs of the CIV will be fairly divided/borne by the Cornerstone Investor(s) and the OLTF, and the related governance issues.

Q18. Should the Proposal require a new form of Fund Facts for OLTFS? Please explain.

We are generally of the view that the requirements of a Fund Facts document does not account for the many asset-class specific risks and features associated with Long-Term Assets, as have been highlighted throughout the Consultation Paper and our response. We believe an OLTF would require expanded Fund Facts disclosure requirements that adequately address these risks and features.

Q19. Should the Proposal require a new form of MRFP for OLTFS? Please explain.

Similar to our response regarding Fund Facts, we believe that the requirements of ongoing investor reporting such as the MRFP should also be attuned to the asset-class specific risks and features associated with Long-Term Assets, and should also be inclusive of asset-specific reporting (perhaps on a summary basis) from underlying CIVs that is available and reported to other investors such as Cornerstone Investors.

Q21. Please explain your views on each of the following investment restrictions:

(i) Minimum level of Long-Term Assets.

We believe that mandating a minimum level of long-term assets (while well-intended) may cause issues in the early and late stages of a fixed-term OLTF's life, when capital is either being invested into assets via one or more CIVs, or conversely when asset sales are occurring, and cash being raised for the fund's wind-down as it approaches term. Term extension features are a common feature of comparable private funds, and should also be considered in the policy work relating to the OLTF, where asset sale timing may be unpredictable, and may not perfectly align with the liquidity needs of a fund wind-down date. We believe flexibility around capital calls and distributions function well to address these needs in the private asset funds world, and that additional research



should be done to reflect these dynamics (and incumbent IFM expectations and fund restrictions) for the OLTF.

(ii) Minimum level of liquid assets (maximum level of Long-Term Assets).

See our comments above.

(vi) Limitations on debt, leverage, the use of specified derivatives, securities lending transactions and purchase or repurchase transactions.

We believe this deserves further examination, as there are often good reasons for entering into certain types of derivatives contracts to augment the investment profile or cash flows of certain Long-Term Assets. Given the increased risk profile to retail investors of Long-Term Assets generally, we're not of the view that the prohibitions listed here applicable to other prospectus-offered investment funds are necessarily appropriate, and instead could be regulated on a more principles-based basis relating to IFM and PM management and appropriate duties/proficiency.

Q23. Please explain your views on each of the following distribution matters:

(ii) Should a purchaser be required to receive investment advice from an adviser in order to invest in an OLTF? Should OLTF units be available through order-execution-only channels?

Given the liquidity concerns and other Long-Term Asset-specific risks that these types of investments present and the fact that non-accredited retail investors inherently have less investable assets than accredited investors, we believe there are significant general suitability concerns with these investments relative to otherwise available prospectus-offered investment funds in Ontario for the most elemental purposes of investing such as retirement savings. These concerns include the risk of over-concentration, liquidity needs, reliance on improperly low risk ratings due to the suppressed volatility profiles of Long-Term Assets from periodic and generally smoothed valuations, inefficacy of even bold-faced and specific disclosures in informing retail investors as to unique risks, and a need for strong registrant proficiency in relation to a suitability recommendation. As such, we do not think units or shares of an individual OLTF should be available to non-accredited retail investors through order-execution-only channels, but rather, require use of a distribution channel where advice and a suitability analysis is required. We believe that many non-accredited retail investors will (and should) ultimately access an OLTF via an investment into a more diversified investment fund (such as a balanced or target-date fund) that has an investment into an OLTF as an underlying allocation, under the oversight of an IFM and PM. We believe this is preferable to direct investment and likely an appropriate mode of investment into an OLTF for most non-accredited retail investors in Ontario. We would also consider additional proposals relating to OLTF-specific disclosures and required specific acknowledgements (similar to those that exist in exempt-market distributions to certain individual investors) as potentially ameliorative of our reservations regarding OEO access to OLTFs for non-accredited investors.



Q24. Are there other distribution matters, specifically other investor protection mechanisms, the Proposal should consider? Please explain.

There is no discussion in the Consultation with respect to the possibility that retail investors will not gain exposure via OLTFS to top-tier investment opportunities in Long-Term Assets, the investment opportunities into which may have already been fully satisfied by larger institutional investors on their own. We believe the market behaviours for the most attractive assets within Long-Term Asset markets are well understood by experienced practitioners and institutions in these markets, and that this leads to a reasonable expectation of some degree of adverse selection for certain investor profiles, including that represented by an OLTFS. This should be considered particularly in relation to return and risk assumptions relating to potential OLTFS, and form a basis for specific governance considerations regarding the operation of both OLTFS and CIVs, and interactions between various investors and fund management and governance (at various levels). We believe there is additional exploratory discussion and consideration required of valuation issues, and specifically the calculation of the net asset value of an OLTFS, particularly if management fees are calculated as a percentage of net asset value, could raise unique conflict of interest concerns not fully addressed by currently available governance mechanisms for prospectus-offered investment funds.

As noted above, we would encourage the OSC to consider implementing, in addition to the UK's measures of providing retail investors prescribed risk warnings and summaries, a requirement that retail investors always receive a suitability determination from a qualified registrant prior to purchase. We would also encourage the OSC, as noted above, to consider if there should be a financial eligibility test or investment concentration restriction for non-accredited retail investors as an added safeguard when investing directly into an OLTFS, rather than through a 'top-fund'.

Concluding Remarks

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. Please feel free to contact us at cac@cfacanada.org on this or any other issue in the future.

(Signed) *The Canadian Advocacy Council of
CFA Societies Canada*

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