IIAC ACCVM
Investment Industry Association of Canada Association canadienne du commerce des valeurs mobilières

February 7, 2025

**Submitted via Email**

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 3S8
E-mail: comments@osc.gov.on.ca

Dear Sir/Madame:

**RE: ONTARIO SECURITIES COMMISSION CONSULTATION PAPER 81-737 – OPPORTUNITY TO IMPROVE RETAIL INVESTOR ACCESS TO LONG-TERM ASSETS THROUGH INVESTMENT FUND PRODUCT STRUCTURES**

We write in response to Ontario Securities Commission Consultation Paper 81-737, *Opportunity to Improve Retail Investor Access to Long-Term Assets through Investment Fund Product Structures* (the "**Consultation Paper**").

**EXECUTIVE SUMMARY**

We generally support the objectives of the proposed Ontario Long-Term Fund ("**OLTF**") framework described in the Consultation Paper and we appreciate the OSC's efforts to devise a novel approach to fostering capital formation and access to long-term investment products. In principle, this proposal could benefit retail investors as well as companies that are involved in real estate development, infrastructure, and other long-term projects. With that being said, we have concerns with respect to the viability of the proposed OLTF framework.

We note that the Consultation Paper does not present any empirical evidence of investor demand for long-term investment funds products in Canada.[1] In addition, based on the information included in the Consultation Paper, it is not clear whether the proposed collective investment vehicle ("**CIV**") framework offers adequate incentives for pension funds and other institutional investors to invest in CIVs as "cornerstone investors".[2] Moreover, it is unclear as to whether there is sufficient market demand for

[1] As the Consultation Paper notes, the availability of comparable products in other jurisdictions *may* suggest that there is investor demand for the type of investment structure described in the Consultation Paper. Comparable products have been introduced in the United States, the United Kingdom, and the European Union.

[2] The Consultation Paper notes that the definition of cornerstone investor ["**Cornerstone Investors**"] would coincide with the definition of "permitted client" in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ["**NI 31-103**"].

OLTFs given that investment funds are already permitted to apply for exemptions to hold illiquid securities and carry on business as a type of long-term investment fund. We understand that, to date, only one investment fund has been granted that form of relief.

In order for the OLTF framework to succeed, it must have sufficient flexibility to account for the diverse range of projects that may be captured by the definition of "long-term asset".[3] In addition, we encourage co-ordination amongst the CSA to formulate a national approach that may include amendments to national instruments and/or establishing a unique set of regulatory requirements for long-term investment funds so that opportunities may be expanded beyond Ontario.

**RESPONSE TO CONSULTATION QUESTIONS**

***Objectives of the Proposal***

The Consultation Paper poses the following questions regarding the stated objectives[4] of the proposed OLTF structure:

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

We generally agree that retail investors could benefit from improved opportunities to invest in long-term assets and that an investment fund structure could facilitate that objective. Subject to an investor's risk tolerance, investment horizon, and other investment characteristics, illiquid securities and other long-term investments can play an important role in an investor's strategy by, for example, providing a means of diversification to reduce portfolio risk, offering illiquidity premiums, and, in some instances, generating higher rates of return. We also generally agree that businesses involved in infrastructure, real estate development, and other long-term projects would benefit from improved access to capital. The proposed fund structure may provide a means for businesses to raise capital as an alternative to, for example, private placements and exempt market distributions.

Furthermore, we agree that the Proposed Framework could, in principle, reduce the risks associated with investing in long-term assets through, for example, the work of investment fund managers and portfolio managers. Requiring OLRFs to distribute units by way of prospectus qualified distributions and complete independent valuations of OLRF investments will help to reduce information asymmetry and reduce liquidity risks. However, as noted below, it is less clear whether and to what extent the participation of Cornerstone Investors in the proposed CIV structure will mitigate risks or provide assurances to investors.

[3] The Consultation Paper adopts a broad definition of "long term asset" that includes venture capital, private equity, mortgages, real estate development, and infrastructure projects.

[4] The Consultation Paper notes the objectives of the Proposal are to: (a) provide retail investors with opportunities to invest in long-term assets; (b) propose a framework that mitigates some of the risks of investing in long-term assets; (c) allow investors to benefit from the skills and experience of investment fund managers and portfolio managers in investing in long-term assets; (d) enable investors to invest alongside Cornerstone Investors; and (e) provide a source of additional capital for long-term assets.

***Collective Investment Vehicle Structure***

The Consultation Paper poses the following question regarding the proposed CIV structure:

> ***Q6.*** *Please explain your views on each of the following overview elements:* […] *(vi) The proposed CIV requirement.*

We understand that requiring Cornerstone Investors to invest in CIVs is intended to reduce information asymmetry between retail and institutional investors and provide retrial investors with the assurance that the underlying asset has been the subject of due diligence by a Cornerstone Investor. However, it is unclear whether and to what extent the participation of a Cornerstone Investor in a CIV will actually achieve those policy objectives.

Although the participation of Cornerstone Investors may provide retail investors will some degree of comfort, we question the extent to which this participation will materially benefit investors. We note, for example, that the contemplated definition of Cornerstone Investor includes a wide range of entities and that the due diligence and valuations that Cornerstone Investor complete may vary significantly. Ultimately, retail investors will not be privy to the valuations and due diligence that is completed by a Cornerstone Investor when investing in a CIV.

More critically, from our review of the Consultation Paper, it is not apparent that the proposed CIV structure offers sufficient benefits to Cornerstone Investors to invest in this type of vehicle. The Consultation Paper contemplates that a Cornerstone Investor would, for example, be required to hold at least 10% equity in the CIV and that the exit rights of Cornerstone Investors and OLTF would be proportionate. It is unclear what incentives the proposed CIV structure offers to Cornerstone Investors, especially those that already invest in long-term assets. Put simply, while the CIV structure may hold benefits for OLTFs and their retail investors, it is less clear that this structure will attract institutional investors to serve as Cornerstone Investors of CIVs.

***Redemption Rights***

The Consultation Paper includes the following questions on the redemption features of OLTF units:

> ***Q6.*** *Please explain your views on each of the following overview elements:* […] *(v) OLTFs being either fixed-term or evergreen investment funds.*
>
> ***Q9.*** *Please explain your views on each of the following redemption features: (i) Frequency; (ii) Discounts; (iii) Caps; (iv) Notice; and (v) Suspensions.*
>
> ***Q10.*** *What are the minimum redemption restrictions OLTFs would need to effectively manage their liquidity?*
> ***Q11****. Could there be investor demand for fixed-term OLTFs that do not offer any or very restrictive redemption rights to their securityholders? Please explain.*
>
> ***Q12.*** *Are there other redemption issues the Proposal should consider? Please explain.*

We agree that making both fixed-term and evergreen units available to investors through OLTFs would increase the effectiveness of the proposal. However, we also believe that the ability of investors to access liquidity by redeeming their units presents challenges to the feasibility of the OLTF proposal.

In order to achieve its objectives, the OLTF framework should be flexible to accommodate the diverse nature and characteristics of different long-term assets. We do not believe that it is practical to set requirements on the frequency in which redemption requests are made. Rather, the redemption rights associated with a OLTF unit should be determined based on the characteristics of the long-term investments that are held by a given OLTF. Similarly, we don't believe that its is necessary or practical to specify a maximum notice period for redemption requests and disagree with proposal to impose a 30-day limit on the length redemption notice periods. Again, these parameters should be set by OLTFs based on fund holdings and liquidity considerations.

We agree that, in order for OLTF to manage liquidity, it may be necessary to set an annual cap for unit redemptions and to allow OLTFs to redeem at a discount to asset value or suspend redemptions. However, it may be impractical and overly corrective to require OLTF to wind-up if annual redemption requests exceed a redemption cap for two consecutive years, as proposed. A fund's inability to redeem units upon demand could arise in different circumstances, some of which could be remediated or be of limited duration. The automatic wind-up of an OLTF may not be in the best interest of retail investors, Cornerstone Investors, or the long-term assets in which CIVs have invested. The proposed OLTF framework must be flexible to account for the circumstances and liquidity limitations of a OLTF and include adequate exceptions and/or exemption relief for firms to avoid mandatory dissolution.

***Valuation of Long-Term Investment Fund Assets***

The Consultation Paper includes the following questions related to the challenges associated with calculating net asset value for long-term investment funds:

> ***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.*
>
> ***Q14.*** *Please explain if any of the following mitigate the difficulties of calculating fair and reasonable NAVs for Long-Term Assets: (i) Experienced IFMs; (ii) Independent boards of directors (or an independent review committee with enhanced supervisory powers additional to reviewing conflict of interests); (iii) Cornerstone Investors; and (iv) Independent valuators.*
>
> ***Q15.*** *Are there other valuation issues the Proposal should consider? Please explain.*

We agree that the process of valuing a long-term asset may be complicated by, for example, the frequency with which valuations are completed and mismatches between the reporting obligations of OLTFs and the companies that control the underlying long-term asset. In light of these complications and the inherent complexities and costs associated with valuing different types of illiquid assets, we agree that OLTF should only be required to value CIVs when distributing or redeeming units and in accordance with the OLTF's annual reporting obligations.

The difficulties associated with valuing long-term assets could be mitigated to some extent through the involvement of experienced investment fund managers and portfolio managers. However, as noted above, it is unclear as to whether and to what extent the involvement of Cornerstone Investors will contribute towards "fair and reasonable" valuations. We note that a Cornerstone Investors may not be required to complete valuations as frequently as OLTFs and it should not be assumed that all Cornerstone Investors will necessarily have the expertise to value long-term assets of all types and in all circumstances.

Although an independent valuation process would likely contribute to investor confidence, we do not believe that a corporate governance structure with an independent board of directors is a necessary precondition to achieving fair and reasonable valuation outcomes. An independent valuation process could also be achieved through, for example, qualified third-party valuators.

The accuracy of a valuation information that is disclosed to retail investors will ultimately depend on the information that is made available by the issuer of the CIV. In order to ensure that OLTFs, Cornerstone Investors, and their respective valuation experts have the information that is needed to complete fair and reasonable valuations, issuers of CIVs ought to be required to produce financial, business, and other information that is relevant to the valuation process. This obligation will contribute to fair and reasonable valuations and reduce information asymmetry between retail investors and Cornerstone Investors.

***Monitoring, Review, and Governance of Ontario Long-Term Investment Funds***

The Consultation Paper includes the following questions on monitoring, reviewing, and governing OLTFs:

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

We do not believe there is a compelling reason to require all OLTFs to be structured as corporations. Imposing restrictions on the permissible governance structure of OLTFs would only detract from the effectiveness of this proposal.

Investment funds should be able to organize themselves in a structure that best suits their tax planning needs on the underlying investments and other considerations. An independent review committee formed under National Instrument 81-107 *Independent Review Committee for Investment Funds* along with independent third-party valuators would have sufficient oversight to manage conflicts of interest and liquidity concerns without the need for an independent board of directors. Similarly, we do not believe that it would be beneficial to require OLTFs to be structured as a trust with a majority-independent board of trustees. Among other limitations, we believe that it may be difficult for OLTF to identify sufficiently qualified and independent individuals who are willing to serve in this capacity.

***Disclosure Requirements***

The Consultation Paper includes the following questions regarding the disclosure obligations of OLTFs:

> ***Q6.*** *Please explain your views on each of the following overview elements:* […] ***(iii)*** *OLTFs distributing units through a prospectus-qualified offering.*
>
> ***Q18.*** *Should the Proposal require a new form of Fund Facts for OLTFs? Please explain.*
>
> ***Q19***. *Should the Proposal require a new form of Management's Report of Fund Performance ("**MRFP**") for OLTFs? Please explain.*
>
> **Q20.** *Are there other disclosure requirements the Proposal should consider? Please explain.*

We agree that OLTFs should be distributed through prospectus-qualified offerings. However, we do not believe the proposed framework requires a new prospectus form for OLTFs and/or a revised Fund Facts form to be delivered prior to the distribution of units in the OLTF. It is important for investors and their advisors to be able to accurately compare different investment fund products using similar data points and formats. Similarly, we do not believe the Proposal should require a new form of MRFP for OLTFs. The existing reporting obligations that apply to investment funds ought to apply in kind to OLTFs.

***Distributions to Investors***

The Consultation Paper poses the following questions on the distribution of OLTF units to retail investors:

> ***Q6.*** *Please explain your views on each of the following overview elements:* […] *(iv) The impact of OLTFs being only distributed to Ontario investors.*
>
> ***Q23.*** *Please explain your views on each of the following distribution matters:*
>
> *(i)* *Should there be limits on the amount that an investor can invest? If so, what should the limits be?*
>
> *(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?*
>
> ***Q24.*** *Are there other distribution matters, specifically other investor protection mechanisms, the Proposal should consider? Please explain.*

We believe that restricting distributions to Ontario investors will detract from the effectiveness of this proposal. As a result of this limitation, OLTFs units could not be traded on Canadian marketplaces. We believe that this will hamper investor demand for OLTF units and disincentivize dealers to place OLTF units on their product shelves. Without access to secondary markets, the ability of an investor to recoup an investment would depend largely on the investor's redemption rights and the OLTF's ability to satisfy the investor's redemption requests. The absence of a secondary market may contribute to increased redemption requests and thereby increase the OLTF's liquidity risks. As a result of these factors, we believe that the OLTF units should be made available to retail investors across Canada, which will require a coordinated approach among Canada's securities regulators.

In addition to the foregoing, we do not believe that there should be predetermined limits on the number of OLTF units that a given investor may purchase nor do we believe that investors should be required to obtain advice from an advisor prior to investing in OFLT units or restricted from purchasing OFLT units through order-execution only dealers. There is no principled basis to restrict the distribution of OLTF units in this manner and doing risks undermining the objectives of this proposal.

***Investment Restrictions on OLTFs***

The Consultation Paper poses the following questions on the proposed investment restrictions for OLTFs:

> ***Q6.*** *Please explain your views on each of the following overview elements:* […] ***(i)*** *OLTFs having the same restrictions on control that apply to investment funds under section 2.2 of NI 81-102.*
>
> ***Q21.*** *Please explain your views on each of the following investment restrictions:*
> - *(i) Minimum level of Long-Term Assets;*
> - *(ii) Minimum level of liquid assets (maximum level of Long-Term Assets);*
> - *(iii) Concentration restrictions for evergreen;*
> - *(iv) Concentration restrictions for fixed-term OLTFs;*
> - *(v) Concentration restrictions if there is a CIV requirement; and*
> - *(vi) Limitations on debt, leverage, the use of specified derivatives, securities lending transactions and purchase or repurchase transactions.*
>
> ***Q22.*** *Are there other investment restrictions the Proposal should consider? Please explain.*

We generally agree that OLTFs will need to have some concentration restrictions in order to mitigate risks for retail investors. We recognize that an overconcentration in a particular asset or type of asset could increase liquidity risks for OLTFs and their investors. As noted in the Consultation Paper, these concentration restrictions will likely require amendments to Part 2 of National Instrument 81-102, *Investment Funds* ("**NI 81-102**").

We note, however, that imposing overly restrictive concentration limits on OLTFs risks undermining effectiveness of the proposed framework. For example, requiring all CIVs to have a Cornerstone Investor while limiting OLTF ownership in CIVs to 10% and imposing asset-specific concentration limitations on OLTFs may impact the appeal of this proposal. We caution that the restrictions placed on OLTF must be measured in order to incentivize participation in this proposal.

***Other Restrictions on OLTFs***

The Consultation Paper poses the following questions on the proposed OLTF framework:

> ***Q4.*** *Would the investment fund structure be less attractive or not viable if the Proposal were to place some restrictions on minimum investments in Long-Term Assets located in Ontario? Please explain.*
>
> ***Q5.*** *Should the Proposal exclude certain types of Long-Term Assets (e.g., sensitive infrastructure projects in specific countries or Long-Term Assets that non-investment fund issuers would be prohibited from owning)? Please explain.*

The Consultation Paper does not provide any insight into the policy grounds that may support restricting the investment fund structure to long-term assets located in Ontario or excluding certain types of long-term assets from this proposal. In our view, the restrictions placed on OLRFs should not be anymore onerous than the restrictions placed on other types of funds that hold long-term or illiquid securities.

***Fund-on-Fund Investments***

The Consultation Paper poses the following questions on the prosect of mutual funds and other investment funds investing in OLTFs:

> ***Q6.*** *Please explain your views on each of the following overview elements:* […] ***(vii)*** *OLTFs within a fund-on-fund structure under an investment fund subject to the requirements of NI 81-102*.

We agree that amending NI 81-102 to allow mutual funds, alternative funds, and non-redeemable investment funds to invest an increased percentage of their NAV in OLTFs would increase the viability of the proposed framework. However, this raises the question of whether it would be more efficient to simply amend N1 81-102 to allow for the type of long-term investment fund structure that is contemplated in the Consultation Paper.

We are available to discuss any of the issues raised in this letter.

Respectfully submitted,

***Investment Industry Association of Canada***