Ontario Securities Commission
Consultation Paper 81-737

Opportunity to Improve Retail Investor Access to Long-Term Assets through Investment Fund Product Structures

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ONTARIO SECURITIES COMMISSION

Opportunity to Improve Retail Investor Access to Long-Term Assets through Investment Fund Product Structures

I. Purpose

The statutory mandate of the Ontario Securities Commission (**OSC** or **we**) is to provide protection to investors from unfair, improper or fraudulent practices; to foster fair, efficient and competitive capital markets and confidence in the capital markets; to foster capital formation; and to contribute to the stability of the financial system and the reduction of systemic risk.[1] One goal under this mandate is to enhance the experience of individual investors. Our efforts in this area are guided toward outcomes including positioning investors to make better life-cycle investment decisions, minimizing regulatory and structural barriers to efficient investing, and reducing investor harm.[2] Another goal under this mandate is to foster conditions for capital formation and innovation in both public and private markets. Among other things, our efforts in this area seek to enable businesses in Ontario to raise more capital to meet their needs for growth, improve financing availability at all stages of business growth across the private and public markets, and expand investment opportunities for a broad range of investors.

This Consultation Paper sets out a framework proposal (the **Proposal**) to facilitate investment opportunities in long-term illiquid assets, which will be referred to as **Long-Term Assets**, through an investment fund product structure. The purpose of the Proposal is to enhance the experience of individual investors and to foster conditions for capital formation and innovation in both public and private markets. The Proposal offers potential benefits to investors and businesses, and could lead to increased investment in capital-intensive assets, such as infrastructure, natural resource projects, and other long-term interests.

The OSC is publishing this Consultation Paper to seek feedback from stakeholders to identify the key success factors, as well as areas of concern with the Proposal. We expect the Proposal to be of particular interest to

1. investors, including institutional investors,
2. investor advocates,
3. investment fund managers, portfolio managers, and dealers,
4. owners and operators of Long-Term Assets, and
5. managers of Long-Term Asset pools.

Stakeholder feedback will be taken into consideration in the next phase for the Proposal, which we anticipate will be the publication for comment of proposed rule amendments and policy changes that would support the implementation of a regime that permits retail investment in Long-Term Assets through investment fund product structures.

[1] Section 1.1 of the *Securities Act* (Ontario) (the **Act**).

[2] Ontario Securities Commission, Strategic Plan, 2024-2030 (available at https://www.osc.ca/sites/default/files/2024-05/pub_20240503_OSC-strategic-plan.pdf).

II. Background

A. Long-Term Assets

The Proposal contemplates a broad definition of Long-Term Assets. Inclusive parameters will provide the greatest opportunities for participation by investors, where suitable, and facilitate investment in a range of assets.

For our purposes, Long-Term Assets fall within the definition of "illiquid assets" in section 1.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**).[3] Long-Term Assets are illiquid assets that cannot be readily disposed of, may be difficult to value, and generally have longer investment time horizons than other assets. They include venture capital, private equity, private debt, mortgages, real estate, infrastructure, and natural resource projects. While this would include capital-intensive assets in Ontario, we do not propose to limit our Proposal to assets that are located within Ontario.

B. Benefits and risks of investing in Long-Term Assets

The role of securities regulators in facilitating investment in Long-Term Assets is not to comment on the merits of such investments. Our role is to ensure there is clarity about the benefits and risks of such investments as we determine whether, and how, to develop a regulatory framework that would permit greater retail investor access to Long-Term Assets.

Long-Term Assets, characterized by their illiquidity, can play a significant role in investment strategies, particularly for those with extended investment horizons. The illiquidity premium is intended to compensate investors for the risk of not being able to quickly liquidate these assets, especially during volatile market periods. Diversification is another key benefit, as long-term assets typically exhibit lower correlation with public market investments, thereby potentially reducing portfolio risk.

For long-term investors, these assets may align with their investment horizon as they are less concerned with short-term market swings and can afford to wait for the assets to mature, potentially realizing greater returns. Holding illiquid Long-Term Assets may also encourage a "buy and hold" strategy, which may result in lower costs and higher yields than active trading strategies.

Investors will only benefit from holding Long-Term Assets if they have information about, and access to, them at a sufficiently early-stage. Asymmetric information and market restrictions can impede investment, particularly for retail investors who are most likely to lack comprehensive knowledge about Long-Term Assets and are restricted from investing in them through existing channels.

While there are potential benefits to investing in Long-Term Assets, it is also important to consider potential risks. Long-Term Assets may achieve a higher rate of return but in exchange have limited or no immediate liquidity and greater price volatility. Although the illiquidity premium is intended to

[3] Under section 1.1 of NI 81-102, "illiquid asset" means: (a) a portfolio asset that cannot be readily disposed of through market facilities on which public quotations in common use are widely available at an amount that at least approximates the amount at which the portfolio asset is valued in calculating the net asset value per security of the investment fund, or (b) a restricted security held by an investment fund.

compensate investors for taking greater risks, the risks cannot be overlooked when determining if these types of investments are appropriate.

The illiquidity of Long-Term Assets means that in times of financial stress, investors may find it challenging to divest their holdings without incurring significant losses. Additionally, the price volatility of these assets can be higher, particularly during systemic shocks, which may lead to larger swings in portfolio value.

Holding a high percentage of Long-Term Assets in a portfolio could negate their diversification benefits. Investors are subject to greater risks if their portfolios are concentrated in Long-Term Assets, if they cannot afford to hold these assets through periods of volatility.

Since Long-Term Assets are only expected to fully return proceeds over the long-term, their prices may be more sensitive to changes in expected market returns. The longer the period, the more sensitive prices will be.[4] This price sensitivity may impact investors' investments in long-term projects as these projects face additional risks, including insufficient capital funding and project execution risks.

In summary, while Long-Term Assets can offer significant rewards, they require careful consideration of market access, information asymmetry, the investor's individual financial goals and investment horizon, and the overall risks of holding these investments.

C. Retail investor access to Long-Term Assets

Investors can access Long-Term Assets through some existing investment vehicles. For example, retail investors may hold securities in public companies that own a variety of Long-Term Assets, including natural resource projects, infrastructure projects, real estate, mortgages, and pools of these assets.[5] Retail investors, however, may be unwilling or unable to invest in Long-Term Assets through these channels. Additionally, many Long-Term Assets are privately funded and unavailable to retail investors. The increase in private financing in Ontario and other developed economies, and the growing tendency for issuers to stay private for longer, may further reduce existing opportunities for retail investors to access Long-Term Assets.[6]

Retail investors could benefit from additional opportunities to invest in Long-Term Assets through an investment fund structure. As an alternative to investing in public companies that own Long-Term Assets, an investment fund would provide retail investors with an investment vehicle whose regulatory framework is more specifically tailored to their needs.

Beneficial investment fund requirements include the professional management of an experienced registered investment fund manager (**IFM**) and a registered portfolio manager (**PM**). Retail investors may be attracted to the requirement to calculate net asset value (**NAV**) over the alternative of buying and

[4] For bonds, duration indicates the years it takes to receive a bond's true cost, weighing in the present value of all future coupon and principal payments. For bonds, duration risk measures the sensitivity of the bond to interest rate changes. Similar to bonds, the longer the period before an investor receives the expected payout of an investment in a Long-Term Asset, the greater the sensitivity of its price will be to changes in expected returns.
[5] Retail investor access to public company securities include bonds.
[6] Ontario Securities Commission, Strategic Plan, 2024-2030 (available at https://www.osc.ca/sites/default/files/2024-05/pub_20240503_OSC-strategic-plan).

selling over a secondary market without a NAV marker (as would be the case through public company investments). Offerings and redemptions at NAV may also increase retail investor interest in Long-Term Assets. Certain informational risks could be mitigated because funds are required to explain their investment objectives and strategies.

Holding Long-Term Assets through investment fund product structures could provide additional diversification benefits beyond simply providing exposure to illiquid assets within an investor's portfolio. An investment fund holding Long-Term Assets may be diversified across different types of Long-Term Assets or across different businesses or projects within a specific type of Long-Term Asset to mitigate concentration risk. Other advantages of holding Long-Term Assets through a diversified investment fund include a lower minimum investment and lower trading costs.

Relative to institutional investors (and to a lesser extent accredited investors), non-accredited retail investors have limited opportunities to invest in Long-Term Assets through private funds, and such opportunities would come with greater risk of information asymmetry.[7] In contrast, a regulatory framework for public funds would include investor protections targeted at mitigating the unique risks of Long-Term Assets. For example, the role of dealers and advisors in connection with investments in Long-Term Assets through a public investment fund vehicle could benefit retail investors. Among other things, dealers and advisers are required to perform a suitability determination when taking certain actions, including making a recommendation to purchase a security to a client. To make a suitability determination, dealers and advisers are required to know the client and to know the product.

Pension plans invest directly in Long-Term Assets but that excludes the significant number of retail investors who are not members of a pension plan.[8] Institutional investors, such as pension funds, are sophisticated and experienced in investing in Long-Term Assets. Retail investors could benefit from a public investment fund vehicle that will require co-investment by institutional investors.

Although retail investors can get exposure to Long-Term Assets through existing public investment fund product structures that hold illiquid assets, such investment funds are subject to the illiquid asset restrictions in section 2.4 of NI 81-102. In particular, mutual funds and non-redeemable investment funds (**NRIFs**) must not purchase an illiquid asset, if immediately after the purchase, more than 10% or 20% respectively of their NAV would be made up of illiquid assets.[9] Also, section 2.3 of NI 81-102 prohibits investment funds from purchasing certain types of Long-Term Assets, including real property and non-guaranteed mortgages.[10]

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[7] The NAV of exempt funds with exposure to Long-Term Assets has grown from approximately $83 billion in 2020 to approximately $134 billion in 2023. See, OSC Investment Funds Survey (available at https://www.osc.ca/en/industry/investment-funds-and-structured-products/investment-fund-survey/investment-fund-survey-data).

[8] According to Statistics Canada, 6.7 million Canadians were active members of a registered pension plan in 2021. Statistics Canada, "Pension plans in Canada, as of January 1, 2022", The Daily, June 23, 2023 (available at https://www.statcan.gc.ca/o1/en/plus/4494-pensions-snapshot-fund-values-payouts-and-memberships).

[9] Subsections 2.4(1) and (4) of NI 81-102.

[10] A mutual fund is subject to the restrictions in subsection 2.3(1) of NI 81-102. Under subsection 2.3(1.1) of NI 81-102, some of those limitations do not apply to an alternative mutual fund. An NRIF is subject to the restrictions in subsection 2.3(2) of NI 81-102. Investments in other investment funds are subject to the conditions in section 2.5 of NI 81-102.

While IFMs could apply for exemptive relief to establish an investment fund to hold illiquid or restricted assets (that would be Long-Term Assets), there are legal and regulatory costs associated with seeking such relief. A regulatory framework for any investment fund holding Long-Term Assets would mitigate these costs and facilitate the formation of investment funds holding a larger percentage of Long-Term Assets in their investment portfolios.

Retail investors could benefit from the opportunity to improve their access to Long-Term Assets through investment fund product structures that take account of the risks and benefits of these investments. These investment vehicles could provide retail investors the opportunity to invest in Long-Term Assets to diversify their portfolio into other asset classes such as infrastructure and other similar projects.

Increasing capital allocation to Long-Term Assets can benefit investors but could also benefit the owners and managers of Long-Term Assets in Ontario since the potential for greater capital inflows could help lower funding costs.

D. Improving conditions for investment in Ontario

We understand the Government of Ontario is looking at innovative ways to finance transportation, housing, energy, and municipal services, including through the “crowding in” of private sector investment from pension funds and other institutions. The Proposal is aligned with this goal as it contemplates an ecosystem that could include financing these projects through investment fund product structures. While implementing the Proposal does not necessarily mean that these infrastructure projects will be financed, it could increase the opportunities for additional funding.

The Long-Term Asset opportunities for Ontario investors as set out in this Consultation Paper may include assets located in other provinces or outside Canada too. We are, however, seeking stakeholder input into this aspect of the Proposal as set out in Q4. and Q5., below.

III. The Proposal

A. Objectives

Retail investors may potentially benefit from improved access to Long-Term Assets through investment fund product structures that invest in such assets. The Proposal seeks to mitigate some of the risks to retail investors of holding these illiquid assets. Meeting these objectives would further our goals to enhance the experience of individual investors, and to foster conditions for capital formation and innovation in both public and private markets while protecting investors who invest in these structures.

The Proposal is intended to accomplish the following objectives:

1. Provide retail investors with more opportunities to access Long-Term Assets through investment fund product structures.
2. Propose a framework that mitigates some of the risks of investing in Long-Term Assets.
3. Enable retail investors to benefit from the skills and experience of IFMs and PMs in investing in Long-Term Assets.
4. Enable retail investors to invest alongside experienced asset managers, institutional investors (including pension funds), and other sophisticated investors (**Cornerstone Investors**).
5. Provide a potential source of additional capital for Long-Term Assets.

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.*

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

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.*

B. Overview

We propose the introduction of a new category of investment fund that would be designed to accommodate investments in Long-Term Assets (**Ontario Long-Term Fund** or **OLTF)**.[11] An OLTF's primary purpose would be to invest money provided by its securityholders and it would not invest for the purpose of exercising control of an issuer or for the purpose of being actively involved in the management of any issuer in which it invests.[12] Depending on the redemption terms of the product, an OLTF would fall within the definition of a mutual fund or an NRIF, but many of the current requirements applicable to those types of funds would not be appropriate to OLTFs, necessitating a unique regulatory framework that balances flexibility with investor protection. Under the Proposal, OLTFs would not be subject to the illiquid asset restrictions applicable to other investment funds. However, they would need to address inherent risks associated with Long-Term Assets, such as liquidity, volatility, concentration, duration, and informational asymmetries, by incorporating robust requirements and protections.

Under the Proposal, OLTFs would become reporting issuers in Ontario through a prospectus-qualified offering. Fund units could be purchased by Ontario investors with longer investment horizons and those who may benefit from the opportunity to invest in Long-Term Assets as part of a diversified and balanced portfolio. As investment funds available only to Ontario investors, OLTFs would not have any securities listed and traded on a marketplace in Canada.

OLTFs would not be subject to the illiquid asset restrictions applicable to other investment funds: Rather, they would be required to hold a minimum percentage of Long-Term Assets. OLTFs would also be subject

[11] In developing the Proposal, we also considered existing Long-Term Asset frameworks in Canada and other jurisdictions. A summary of these frameworks is set out in Appendix A.
[12] Under subsection 2.2(1) of NI 81-102, an investment fund must not purchase a security of an issuer (a) if, immediately after the purchase, the investment fund would hold securities representing more than 10% of (i) the votes attaching to the outstanding voting securities of the issuer; or (ii) the outstanding equity securities of the issuer, or (b) for the purpose of exercising control over, or management of, the issuer.

to a maximum percentage of Long-Term Assets to ensure they hold sufficient liquid assets to meet redemption requests.

Under the Proposal, OLTFs could be either fixed-term or evergreen funds,[13] provided liquidity risks arising from redemption and funding mismatches are disclosed and effectively managed. Fixed-term OLTFs may be suitable for funding infrastructure or other development projects with expected completion dates. Evergreen OLTFs may be suitable for investing in rolling pools of private equity, private debt, or real estate or for holding operational and commercialized infrastructure assets.

The Proposal would require OLTFs to invest in Long-Term Assets through the securities of underlying collective investment vehicles (**CIV**). CIVs would be issuers that have the objective of investing in Long-Term Assets and would be required to have a Cornerstone Investor like a pension fund or other institutional investor. A requirement to invest through CIVs would facilitate the objective of OLTFs investing alongside other sophisticated long-term investors. The right to exit investments in CIVs by Cornerstone Investors should be proportional to the exit rights of the OLTF.

As an investment fund, OLTFs would have to be managed by an IFM, with portfolio assets being selected and monitored by a PM. The involvement of these fiduciaries should mitigate some of the complexity and unique risks of holding Long-Term Assets for retail investors.

We also think there may be scope to incorporate funds that invest in Long-Term Assets, like OLTFs, into a fund-on-fund structure. The investment restrictions in Part 2 of NI 81-102 could be amended to allow mutual funds, alternative mutual funds, or NRIFs to invest a percentage of NAV in funds that invest primarily in Long-Term Assets. However, this alternative would require the participation of our Canadian Securities Administration partners.

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.

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

(iii) OLTFs distributing units through a prospectus-qualified offering.

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

(v) OLTFs being either fixed-term or evergreen investment funds.

(vi) The proposed CIV requirement.

[13] A fixed-term OLTF would have a definitive date for winding up, likely tied to the expected completion of infrastructure or other development projects the OLTF is funding. An evergreen OLTF would not have a specified term and could continue to roll over, in theory perpetually, the pool of Long-Term Assets it holds. While we start from a view that OLTFs should be (semi) open-ended funds given our view that they should have redemption features even if on a limited basis, we acknowledge there may be a market for fixed-term OLTFs that are closed-end funds.

(vii) *OLTFs within a fund-on-fund structure under an investment fund subject to the requirements of NI 81-102.*

Q7. *Are there other overview elements the Proposal should consider? Please explain.*

C. Threshold issues

When developing proposed rule amendments and policy changes following the consideration of stakeholder comments regarding the Proposal, we will evaluate all the requirements that apply to other types of investment funds to assess their applicability to OLTFs. We will consider whether each requirement should be applicable or amended and whether additional requirements are needed to adequately mitigate the risks of holding Long-Term Assets. For the purposes of this Consultation Paper, however, we have identified threshold issues in the following areas and set out our current views on how these issues should be addressed:

1. Redemptions.
2. Valuation (NAV).
3. Monitoring, Review and Governance.
4. Disclosure.
5. Investment restrictions.
6. Distribution.

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

i. Redemptions

Funds that primarily invest in Long-Term Assets must address the liquidity risk of holding illiquid assets. Liquidity risk results from a mismatch between the funds' obligations to manage portfolio liquidity against the liquidity needs of securityholders. While redemption restrictions will help funds manage their liquidity, more onerous redemption restrictions will make investments in OLTFs less attractive to investors, counter to the objective of allowing retail investors to benefit from the opportunity to access Long-Term Assets through investment fund structures.

Our view is that redemption restrictions should be permitted to the extent necessary for OLTFs to manage their liquidity and reporting needs given the profile of a fund and the characteristics of the Long-Term Assets held by the fund. We think redemptions should be no more frequent than monthly and no less frequent than annually, but rather than specify a redemption frequency for all OLTFs, we would specify a range and permit OLTFs to choose a frequency within that range. As a result, redemption frequency could be limited to monthly, quarterly, semi-annually, or annually. Longer frequencies would benefit OLTF liquidity management. Shorter frequencies would benefit the liquidity preferences of investors. The frequency of NAV calculations would need to be aligned with the timing of redemptions.

Redemptions could be permitted to be made at a discount to NAV. Under the Proposal, OLTFs would be allowed to charge investors the actual costs incurred to administer a redemption. Those charges would be for the benefit of the fund.[14]

In addition to limits on redemption frequency, OLTFs could be permitted to cap total redemptions per period (as a percentage of NAV). We think a cap of 10% per annum should be sufficient for liquidity management purposes and, under the Proposal, this would be the lowest permissible redemption cap. Our view is that the Proposal would include a requirement that the OLTF be wound up if annual redemption requests exceed the cap for two consecutive years.

Investors could be required to provide advance notice of their intent to redeem. A longer period would benefit OLTF liquidity management. A shorter period would benefit the liquidity preferences of investors. The Proposal would specify a maximum notice period of 30 days with each OLTF having the flexibility to set a shorter period as appropriate.

Investment funds must pay redemption proceeds within a brief time after the date on which the redemption price was established.[15] OLTFs could have difficulty meeting a short deadline and may require a longer period to calculate NAV, calculate individual redemptions, and make payment to redeeming unitholders. Under the Proposal, OLTFs would pay redemption proceeds no later than 15 days after a valuation date.

Temporary liquidity mismatches could result in a need to suspend periodic redemptions. OLTFs could be allowed to suspend periodic redemptions for a specified period where it is in the best interest of the fund. Beyond a temporary period, the suspension of periodic redemptions suggests that a fund should be wound up. Under the Proposal, OLTF redemption suspensions beyond the temporary period would be permitted only pursuant to the approval of the OSC (and an independent board of directors, if applicable).

There may be a market for fixed-term OLTFs with even greater restrictions on securityholder redemption rights.[16] Redemptions could be restricted during the ramp-up period, which could be for a set period (e.g., one, two, or three years) or only for as long as it takes for a fund to substantially deploy proceeds from its initial public offering into one or more CIVs. Fixed-term OLTFs could be required to return proceeds to investors to the extent not substantially deployed by the end of the ramp-up period. Fixed-term funds could be required to return proceeds after each CIV exit or only on fund termination. Our view is that the Proposal would allow for fixed-term OLTFs with no or very restrictive redemption rights.

Q9. Please explain your views on each of the following redemption features:

(i) Frequency.

(ii) Discounts.

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[14] For example, interval funds are permitted to deduct a redemption fee that is not more than 2% of the proceeds, which is intended to compensate the fund for redemption expenses. *See*, section ii of Appendix A, below.
[15] Subsections 10.4(1), (1.1) and (1.2) of NI 81-102.
[16] The European long-term investment fund framework contemplates a fixed term structure. *See*, section iv of Appendix A, below.

(iii) *Caps.*

(iv) *Notice.*

(v) *Payment.*

(vi) *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.*

ii. Valuation (NAV)

The fair value of OLTF portfolio assets cannot be based on reported prices and quotations in active markets because Long-Term Assets will not be publicly traded.[17] While the degree of difficulty in calculating fair and reasonable values will vary depending on the type of Long-Term Assets to be held by an OLTF, valuation will be challenging in most cases. Consequently, we think OLTFs would have difficulty calculating NAV on a continuous basis. This would also support an argument for less frequent sales and redemptions as OLTFs would be required to calculate NAV on the same frequency.

Despite these challenges, we think an experienced IFM should have the ability (or access to expert advisory resources) to calculate a fair and reasonable price for individual Long-Term Assets. Assuming Long-Term Assets are held through a CIV, the presence of Cornerstone Investors should facilitate or provide external evidence that the process of valuing a particular Long-Term Asset is fair and reasonable. Under the Proposal, OLTFs would also be subject to a requirement to obtain an independent valuation at least as frequently as at the end of each annual financial reporting period.[18] The need for additional independent valuations could depend on factors such as the frequency of purchases and redemptions, as well as the characteristics of the OLTF's underlying assets.

The timing of OLTF NAV calculations could be adversely affected by mismatches with the valuation frequencies of certain Long-Term Assets. This may be the case for OLTFs holding pools of private loans, real estate, or mortgages. Similarly, the timing of OLTF NAV calculations could be adversely affected by the financial reporting periods of certain Long-Term Assets or CIVs. This might be the case for OLTFs holding private equities or continuing interests in infrastructure projects. We think that the presence of experienced IFMs, Cornerstone Investors, and independent valuations would mitigate the difficulties OLTFs would face in calculating NAV and bolster confidence in the valuation of their portfolio assets.

[17] Disclosure of the current value of a portfolio asset is set out in section 3.5 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**). The calculation of NAV is set out in Part 14 of NI 81-106. Publicly traded investments would not be illiquid assets as defined in section 1.1 of NI 81-102.
[18] Similar to the requirements for labour sponsored or venture capital funds under Part 8 of NI 81-106.

For fixed-term OLTFs that offer no redemption rights to their securityholders, there may not be a need to calculate NAV other than for performance reporting and financial reporting purposes. This assumes that semi-annual reporting would be sufficient for investors to evaluate the performance of these types of OLTFs.

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.

(iv) Independent valuators.

Q15. Are there other valuation issues the Proposal should consider? Please explain.

iii. Monitoring, Review and Governance

OLTFs would be exposed to atypical risks, including the liquidity, volatility, concentration, duration, and informational risks of holding Long-Term Assets. OLTFs would also have unique challenges such as the need to manage the mismatch between the funds' liquidity and the liquidity needs of their securityholders. In addition to the requirements applicable to other investment funds, including the requirements set out in National Instrument 81-107 *Independent Review Committee for Investment Funds*, which require reporting issuer investment funds to establish an independent review committee to review conflict of interest matters of the fund, other monitoring, review and governance requirements could provide investors with some assurance that these atypical risks and challenges are appropriately managed. Noting that OLTFs will be considered investment funds for the purposes of Ontario securities legislation, we think that OLTF requirements would include a requirement

1. for OLTFs to be structured as corporations and to have an independent board of directors,[19]
2. for the independent board of directors to address matters concerning the OLTF, including conflicts of interest,[20]
3. for IFMs to disclose how they manage a portfolio of Long-Term Assets in the best interests of an OLTF and its securityholders,

[19] We acknowledge that an independent board requirement means OLTF would have to be organized as a corporation. Alternatively, the Proposal could require an independent review committee with enhanced supervisory powers additional to reviewing conflict of interests.
[20] If an OLTF would be required to have an independent board of directors, it may also need to have an audit committee.

4. that IFMs disclose their assessment of whether Long-Term Assets are fairly valued in respect of NAV calculations, and
5. to obtain independent valuations of Long-Term Assets.

The Proposal would require that each OLTF be managed by an IFM, with the OLTF's portfolio assets selected and monitored by a PM. The Proposal could also require that the experience of each OLTF's IFM and PM in investing in the Long-Term Assets held by the OLTF be disclosed.

Our view is that the Proposal would require that OLTFs invest in Long-Term Assets through a CIV. The responsibility for due diligence on each CIV would be the responsibility of each OLTF's IFM, PM, and, if applicable, independent board of directors. Co-investing with Cornerstone Investors through a CIV could also provide investors with another layer of comfort regarding management of an investment in each Long-Term Asset held by an OLTF.

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.*

iv. Disclosure

In our view, the Proposal would set out a new prospectus form for OLTFs. Though it could be based on Form 41-101F2 *Information Required in an Investment Fund Prospectus*, the new prospectus form would require disclosure of the features and risks unique to each OLTF, including disclosure

1. of investment objectives and strategies that fully explain the OLTF's plan to invest in specific Long-Term Assets,
2. that securityholders of the OLTF should have a long-term investment horizon and should not hold more than a small percentage of a well-balanced diversified portfolio in OLTF securities,
3. of the impact of an investment in specific Long-Term Assets on the risks of an investment in the OLTF.
4. of any sale and redemption restrictions adopted by the OLTF to allow the OLTF to manage its liquidity given its holdings of specific Long-Term Assets,
5. of any challenges in calculating NAV that the OLTF could experience due to it holding specific Long-Term Assets,
6. that the OLTF is required to invest in Long-Term Assets through CIVs, the nature of such CIVs, including the management of specific CIVs and the involvement of Cornerstone Investors, and expected CIV fees,
7. of any monitoring, review and governance requirements that differ from those for other types of investment funds,

8. of any investment restrictions that differ from those for other types of investment funds,
9. of the role of the IFM and PM,
10. of the expertise or experience the IFM and PM have with investing in the specific Long-Term Assets held by the OLTF, and
11. that the OLTF will not have any securities listed and traded on a marketplace and resale restrictions will apply to OLTF units so investors should only expect liquidity from limited periodic redemptions that may be at a discount to NAV.

The Proposal could include a new form of summary disclosure document for OLTFs that would be similar to the Fund Facts, which would be delivered prior to the distribution of OLTF units to investors. The new form of Fund Facts could be modified to require disclosure of the key features of each OLTF, including the disclosure items above.

The Proposal could include a new form of Management's Report of Fund Performance (**MRFP**), which should be filed each reporting period along with semi-annual financial statements. The MRFP for OLTFs should be tailored towards explaining each OLTF's financial results, specifically focusing on the valuation of Long-Term Assets held by the OLTF.

Under the Proposal, OLTFs would be required to include "Ontario Long-Term Fund" in their name and only funds that comply with all OLTF requirements would be permitted to use this name.

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

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

Q20. Are there other disclosure requirements the Proposal should consider? Please explain.

v. Investment restrictions

For OLTFs to invest in Long-Term Assets, the investment restrictions in Part 2 of NI 81-102 would have to be modified.

The Proposal contemplates a broad and inclusive definition of Long-Term Assets. In other words, OLTFs would be able to hold any illiquid asset including venture capital, private equity, private debt, mortgages, real estate, infrastructure, and natural resource and other projects. An OLTF would disclose the type of Long-Term Assets it holds and explain its investment objectives in respect of those Long-Term Assets. Given an expansive definition of Long-Term Assets, the restrictions in sections 2.3 and 2.4 of NI 81-102 would not apply to OLTFs. Rather, OLTFs would be required to invest between 50% and 90% of NAV in Long-Term Assets. The ceiling (whether 90% or less) could be tied to any limits on the redemption amount and should be sufficient for an OLTF to manage its liquidity needs. The floor (whether 50% or more) would be large enough to ensure that there is no material dilution of any illiquidity premium or diversification benefits of investing in Long-Term Assets. OLTFs that have more than 90% (or other appropriate ceiling) of their NAV in illiquid assets would be required to reduce their holdings within a reasonable time. Alternatively, rather than prescribing a minimum and maximum liquidity percentage, the Proposal could provide OLTFs with the ability to set their own liquidity parameters so long as there is alignment between such liquidity parameters and the OLTF's redemption policy and anticipated redemptions to minimize the risk of liquidity mismatches.

The Proposal would require that OLTFs hold Long-Term Assets through one or more CIVs. A CIV would be defined as any issuer that has the primary purpose of investing in one or more Long-Term Assets. Ownership by OLTFs in any one CIV would be limited to 10% of the CIV's equity. A CIV would have to include one or more Cornerstone Investors who hold at least 10% of the CIV's equity and who must be a "permitted client" as defined in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (or fall within specific categories of a permitted client).[21] The purpose of a CIV requirement would be to enable retail investors to invest alongside Cornerstone Investors. A CIV requirement may be better suited to fixed-term OLTFs investing in infrastructure or other development projects. The exit rights of Cornerstone Investors would be proportional to the exit rights of OLTFs.

Under the Proposal, OLTFs would be subject to concentration restrictions to optimize the diversification benefits of holding Long-Term Assets through investment fund product structures.[22] Evergreen OLTFs investing in pools of private equity, private credit, or real estate would be subject to a requirement that not more than 10% of their NAV be invested in any one asset. Fixed-term OLTFs investing in infrastructure or other development projects could be subject to a requirement that, after a ramp-up period, no more than 20% of their NAV be invested in any one asset. These concentration restrictions would apply across all CIVs held by the OLTF. In other words, OLTFs could invest in just one CIV if its holdings of Long-Term Assets comply with these concentration restrictions or OLTFs could invest in multiple CIVs even if each CIV does not comply with these concentration restrictions provided that the OLTF's portfolio as a whole complies.

Our initial view is that OLTFs' debts would be limited to 10% of their most recent NAV at the time of borrowing. OLTFs should not take on additional leverage though an exception for temporary liquidity management may be necessary. Similarly, OLTFs would not be permitted to: (i) hold, or enter into, transactions that involve specified derivatives, except when used for hedging purposes; (ii) enter into any securities lending transactions in respect of its holdings of Long-Term Assets; or (iii) enter into purchase or repurchase transactions in respect of its holdings of Long-Term Assets.

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 OLTFs investing in pools of Long-Term Assets.

(iv) Concentration restrictions for fixed-term OLTFs investing in infrastructure or other development projects.

[21] We acknowledge that this may mean that there would have to be restrictions on the ability of Cornerstone Investors to exit their investment in a CIV.
[22] Similar to section 2.1 of NI 81-102.

(v) Concentration restrictions if there is a CIV requirement.

(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.

vi. Distribution

Under the Proposal, OLTF securities would be made available through investment dealers overseen by the Canadian Investment Regulatory Organization (CIRO), and/or portfolio manager registered with Canadian securities regulators. Where the OLTF is a mutual fund, OLTF securities may be distributed by mutual fund dealers that distribute alternative mutual funds. Suitability, “know-your-client” (KYC) and “know-your-product” (KYP) requirements would generally apply, except in the case of purchases made through order-execution-only dealers. Given the unique features of OLTFs we think it would be appropriate to restrict access through order-execution-only dealers. Alternatively, a self-assessment questionnaire could be used to assist investors in determining whether investing in an OLTF would be appropriate for their individual circumstances. This could include an explanation that holding more than 10% of their investments in Long-Term Assets is highly risky and not advised.

Additionally, we query whether there should be specific requirements in place to highlight liquidity limitations of the product and the specific redemption features that might apply. As noted above, tailored disclosure requirements that address the unique features of OLTFs would be incorporated into offering documents that are delivered to investors. This could be supplemented with a requirement for investor to specifically acknowledge that investing in OLTFs is generally not appropriate for investors with short term investment horizons, or that need the ability to liquidate their investment on demand.

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.

IV. Comments and submissions

We invite participants to provide input on the issues outlined in this public Consultation Paper. You may provide written comments in hard copy or electronic form. The consultation period expires **February 7, 2025**.

We will publish all responses received on our website (www.osc.gov.on.ca). Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Please submit your comments in writing on or before **February 7, 2025**. Please send your comments by email in Microsoft Word format.

Please address your submission to the Ontario Securities Commission.

Please deliver your comments to:

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
E-mail: comments@osc.gov.on.ca

V. Questions

Please refer your questions to any of the following:

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APPENDIX A

Other Long-Term Asset Frameworks

The following are existing Long-Term Asset frameworks that have been developed in Canada and other jurisdictions that we considered in developing the Proposal.

i. U.S. Business Development Corporations

The framework for Business Development Corporations (**BDCs**) was created in the United States in 1980 to encourage the establishment of public vehicles to invest in privately owned, small- and medium-sized companies that are unable to obtain financing through traditional means.[23] BDCs are closed-end funds that are a hybrid between an operating and investment company. At least 70% of a BDC's assets must be invested in an "eligible portfolio company". BDCs must make significant managerial assistance available to their portfolio investments.

BDC requirements include investment and diversification requirements but permit the underlying assets to be publicly traded securities. Many BDCs are exchange listed, providing secondary market liquidity to investors.

Other public BDCs provide liquidity through periodic (typically quarterly) redemptions. Retail investors have access to exchange-listed BDC and retail investors who meet certain requirements may invest in BDCs that are not exchange-traded. Underlying assets must be valued on a quarterly basis. Determining fair value for assets without a market price is left to the discretion of the BDC's board of directors (within the framework of fair value accounting principles).

ii. U.S. and Canadian Interval funds

In the United States, an interval fund is a closed-end fund permitted to hold illiquid assets.[24] U.S. interval funds may continuously offer shares at net asset value (**NAV**) and must offer periodic (quarterly, semi-annually, or annually) redemptions to shareholders for between 5% and 25% of its shares at NAV. Shareholders must provide advanced notice of their intent to redeem. The redemption price is set after the receipt of this notice and payment generally takes place within 14 days after pricing. Interval funds are permitted to deduct a redemption fee that is not more than 2% of the proceeds, which is intended to compensate the fund for redemption expenses. Shares of U.S. interval funds do not trade on a secondary market.

U.S. tender offer funds are like U.S. interval funds, but redemptions are at the discretion of the board of directors rather than on specified periodic dates.

While neither U.S. interval funds nor U.S. tender offer funds are prohibited from holding illiquid assets, liquidity restrictions generally apply to them during the period between the notice of redemption and redemption pricing dates. No liquidity restrictions apply to U.S. tender offer funds other than the ability to fulfill tenders "promptly".

[23] The regulations permitting US BDCs are set out under the Investment Company Act of 1940.
[24] The regulations permitting interval funds in the United States are set out under Rule 23c-3 of the Investment Company Act of 1940.

In January 2021, the Ontario Capital Markets Modernization Taskforce recommended that the OSC consider establishing a regime for a retail private equity investment fund based on the interval fund concept in the United States.[25] The Taskforce noted that limited redemption rights would allow portfolio managers to take a longer-term investment view and take advantage of investing in less liquid, potentially higher-return asset classes that may not be suitable for a conventional mutual fund offering daily liquidity.

On January 24, 2022, the OSC, as principal regulator, granted exemptive relief to an IFM to operate an interval fund.[26]

Among other things, the decision permits the interval fund to invest up to 90% of its NAV in illiquid assets. The decision also permits the fund to pay redemption proceeds pursuant to a quarterly redemption for the pro rata units above 5% of the fund's outstanding units at NAV. The fund's unitholders have at least 21 calendar days to provide notice of their intent to redeem.

The month-end NAV must be calculated no later than seven business days following each applicable redemption valuation date and redemption proceeds must be paid to unitholders no later than nine business days following the redemption valuation date. The illiquid assets, indirectly held by the fund, must be valued monthly by an independent and reputable valuation firm.

If the fund receives redemption requests in excess of 5% of its NAV for eight consecutive redemption periods or the illiquid asset is more than 90% of the fund's assets, the fund is required to undertake an orderly wind-up.

The fund is subject to concentration and control limits and fund units may only be distributed through investment dealers.

iii. United Kingdom Long-term Asset Fund

The United Kingdom Financial Conduct Authority (**FCA**) published Policy Statement PS 21/14 (**Policy Statement 21/14**) in October 2021 to establish an open-ended fund (**LTAF**) designed to facilitate investment in long-term, illiquid assets.[27] The LTAF regime aims to address challenges faced by investors seeking exposure to these asset classes while providing appropriate safeguards, oversight, and other investor protection measures.

To ensure greater consistency between the liquidity of the fund's assets and its redemption terms, LTAFs are not permitted to redeem more frequently than monthly, and investors are required to provide at least a 90-day notice period for redemptions. To address the risks of investing in LTAF, Policy Statement 21/14 includes enhanced governance and disclosure requirements. The open-ended structure with redemption restrictions seeks to balance investor liquidity needs with the illiquid nature of the

[25] Ontario Capital Markets Modernization Taskforce, Final Report (January 2021), Recommendation 37: Introduce a retail investment fund structure that pursues investment strategies in less liquid private equity and debt markets, including early-stage businesses, p. 65-66.
[26] Mackenzie Financial Corporation et al. (Re), 2022 ONSEC 1 (24 January 2022).
[27] The Financial Conduct Authority (FCA), Policy Statement PS21/14: A new authorised fund regime for investing in long-term assets, 25 October 2021.

underlying assets. LTAF must invest more than 50% of their assets in unlisted securities and other long-term, illiquid assets.

LTAFs were originally only available to institutional investors. In June 2023, the FCA published Policy Statement PS 23/7 (**Policy Statement 23/7**) to extend the LTAF regime by, among other things, permitting access by retail investors.[28] Under Policy Statement 23/7, LTAF may offer units to retail investors if prescribed risk warnings and summaries are provided to them.

Under Policy Statement 23/7, LTAF distributing units to retail investors must be managed by a full-scope United Kingdom Alternative Investment Fund Manager. Such firms will also need to appoint at least two independent directors.

Advised retail investors will benefit from suitability assessments. Unadvised retail investors must confirm that their exposure to LTAFs is less than 10% of investible assets.

iv. European Long-term Investment Fund

The European Union published its Regulation on European Long-term Investment Funds (the **ELTIF Regulation**) in May 2015 to establish a new investment vehicle, a European Long-term Investment Fund (**ELTIF**) for investors across the European Union.[29]

An ELTIF must, among other things, be managed by a European Union Alternative Investment Fund Manager and invest at least 70% of its capital in eligible investment assets. Generally, an ELTIF may invest in long-term assets such as small and medium-sized enterprises and in the development and operation of infrastructure, public buildings, social infrastructure, transport, sustainable energy, and communications infrastructure.

ELTIFs do not offer ongoing redemption rights. Rather, cash is returned at the end of the product's life. The expected end of life date is disclosed in advance to investors.

ELTIFs must not engage in short selling and must observe strict limits on its use of leverage and derivatives. ELTIFs are also subject to many investor protection provisions, including disclosure, suitability, diversification, and concentration requirements. The ELTIF Regulation prescribes limits on the percentage of a retail investor's portfolio that may be invested in an ELTIF.

In March 2023, the ELTIF Regulation was amended to broaden the scope of eligible investment assets, reduce certain investment thresholds, and remove barriers to participation from retail investors.[30] Of note, the amendments lowered the minimum threshold for eligible investment assets to 55% of capital and permitted early-exit provisions, subject to the requirement that there be a policy for matching potential investors and exit requests.

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[28] Financial Conduct Authority (FCA), Policy Statement PS 23/7: Broadening retail and pensions access to the long-term asset fund, 12 June 2023.
[29] Regulation (EU) 2015/760 of the European Parliament and the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98-121).
[30] Regulation (EU) 2023/606 of the European Parliament and the Council of 15 March 2023 amending Regulation (EU) 2015/760 as regards the requirements pertaining to the investment policies and operating conditions of European long-term investment funds and the scope of eligible investment assets, the portfolio composition and diversification requirements and the borrowing of cash and other fund rules (OJ L 80, 20.3.2023, p. 1-23).