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February 7, 2025

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8

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

On behalf of Mackenzie Financial Corporation (“**Mackenzie**”) we are pleased to provide comments on the proposed framework outlined in the Consultation Paper (“**Proposed Framework**”) which seeks to facilitate opportunities for retail investors to access long-term illiquid assets through investment funds.

Our Company

Mackenzie is a leading investment management firm providing investment advisory and related services to retail and institutional clients. We are registered as a portfolio manager and investment fund manager with total assets under management as at January 31, 2025 of approximately \$219.5 billion. Mackenzie primarily distributes its retail investment products through over 175 dealers and more than 30,000 independent financial advisors across Canada.

We are a wholly owned subsidiary of IGM Financial Inc. (“**IGM**”), a member of the Power Financial group of companies and a leading wealth and asset management company supporting financial advisors and the clients they serve in Canada, and institutional investors throughout North America, Europe and Asia. Through its operating companies, IGM provides a broad range of financial planning and investment management services to help Canadians meet their financial goals. IGM’s services are carried out principally through its subsidiaries Mackenzie and IG Wealth Management.

General Comments

As leaders in the alternative assets space, having launched Canada’s first interval fund¹ with strategic partner Northleaf Capital Partners (Canada) Ltd. and other innovative investment products, we strongly believe that providing retail investors with improved access to infrastructure, private credit, private equity and real estate (“**Long-Term Assets**”) will offer increased opportunities for portfolio diversification, thereby further democratizing the investment

¹ *Mackenzie Financial Corporation et al. (Re)*, 2022 ONSEC 1 (2022).

landscape and potentially enhancing overall portfolio outcomes.

We support the Proposed Framework, applaud the OSC's commitment to regulatory innovation demonstrated by the proposals in the Consultation Paper and welcome this opportunity to share our views on the establishment of a practical regime for the Ontario Long-Term Fund ("**OLTF**"). It is our view, however, that the Proposed Framework is at risk of being overly prescriptive and would be strengthened by incorporating greater flexibility for investment fund managers to account for the investment attributes of the particular Long-Term Assets.

While we provide detailed responses to several key questions raised by the Consultation Paper, we believe that special attention should be directed towards salient issues including the proposed requirement for cornerstone investors, mandated independent valuation of OLTFs and the eligibility of OLTFs to be held in registered plans. We also believe that for the Proposed Framework to be truly impactful in terms of providing access to OLTFs for retail investors, it must be national in scope, and accordingly we strongly encourage the Canadian Securities Administrators ("**CSA**") to participate in the consultation and rule-making process.

It is from this perspective that we provide our feedback on the key elements of the Consultation Paper.

Comments on Specific Aspects of the Proposed Framework

Cornerstone Investors

While we agree that retail investors investing alongside large institutional investors could provide enhanced credibility and stability to a collective investment vehicle ("**CIV**"), we believe this should not be considered mandatory. Instead, it should be accompanied by other investor-centric requirements such as robust disclosure, clear guidelines with respect to valuation processes and/or alternative regulatory requirements. We believe this approach is consistent with the established long-term asset frameworks which are in place in other jurisdictions.

As referenced in the Consultation Paper, the United Kingdom Financial Conduct Authority established an open-ended fund ("**LTAF**") designed to facilitate investment in long-term, illiquid assets.² An LTAF does not explicitly require institutional investment alongside retail investors. Rather, a series of requirements exist to provide appropriate investor protection. These include, among others: illiquidity risk warnings, customer assessments and the appointment of an "external valuer" or the fund manager to conduct valuation upon satisfaction of certain conditions.^{3,4}

The European Union's Long-Term Asset investment vehicle – the European Long-Term Investment Fund ("**ELTIF**") – similarly distinguishes between retail and professional classes of ELTIFs and permits retail investment without requiring an institutional investor. The ELTIF

² Financial Conduct Authority (FCA). (2021). *Policy Statement PS21/14: A new authorised fund regime for investing in long-term assets*.

³ Financial Conduct Authority (FCA) (2022). *LTAF valuation and pricing requirements*.

⁴ Financial Conduct Authority (FCA) (2023). *FCA widens retail and pensions access to Long Term Asset Funds*.

regime has demonstrated success since its inception, with recent data showing that 26/34 asset managers surveyed launched at least one ELTF, with combined ELTIF assets exceeding €9.3B in aggregate.⁵ Like the LTAF regime, several conditions exist in ELTIFs to ensure appropriate retail investor protection. Specifically, ELTIF managers must appoint an external valuer to perform the valuation of the fund's assets unless the manager has the necessary knowledge, skills, and experience to carry out a proper and independent valuation themselves.⁶

In addition to retaining consistency with other jurisdictions, we believe there are fairness issues with the cornerstone investor proposal in the Proposed Framework that could negatively impact retail investors. For example, the liquidity needs of institutional and retail investors might vary significantly or unwanted costs or tax compliance issues could be introduced making an OLTF vehicle impractical.

Rather than requiring cornerstone investors, we support, in most instances, the OSC's proposal for independent valuation of the OLTF, provided it is paired with the flexibility to allow the CIV fund manager to conduct valuation, if it has the appropriate expertise to do so.

Valuation

The proposal to require independent valuation of OLTFs would promote investor confidence in the value of Long-Term Assets. However, we believe that there should be a reasonable degree of flexibility in the implementation of an independent valuation process commensurate with the specific asset class being valued and the expertise of the CIV manager. Certain Long-Term Asset classes, such as private equity assets in underlying fund holdings and infrastructure asset classes can be more challenging to independently value without sufficient expertise. This difficulty is due to various factors including limited historical financial data on private companies, the impact of performance fees and carried interest on the reported value of assets and the illiquid nature of private equity assets themselves. We submit that requiring full independent valuation in every instance would be time-consuming and not cost-effective, placing an undue financial burden on the OLTF. Rather, where the CIV manager has the necessary expertise, the OLTF should be able to rely on their valuation. In these circumstances we propose that the CIV manager undergo an annual independent third-party audit which would include an assessment of Long-Term Asset valuations and processes.

Additionally, we believe that the Proposed Framework must provide flexibility on the frequency of valuation. Given the significant expense of preparing frequent valuations, in our view an overly frequent independent valuation requirement would become prohibitively expensive to undertake, particularly for smaller managers looking to operate in the Long-Term Assets space. This is particularly true for certain Long-Term Asset classes, such as infrastructure assets, that can be more resource-intensive to value and have less liquidity when compared to other asset classes such as private credit.

⁵ Scope Fund Analysis. (2024). *A new era: Overview of the ELTIF market 2023/2024*.

⁶ Commission Delegated Regulation (EU) 2024/2759 of 19 July 2024 supplementing Regulation (EU) 2015/760 of the European Parliament and of the Council.

From our perspective, by allowing CIV managers with appropriate expertise and oversight to internally value the assets in a given OLTF and by permitting appropriate flexibility in valuation frequency based on the class of assets being valued, the process would remain objective and reliable, while also providing transparency and accountability to investors.

Structure and Investment Restrictions

Mackenzie supports the OSC's position which allows for OLTFs to be structured as either fixed-term or evergreen funds. In our view, an evergreen structure is generally preferred for private credit, private equity and real estate Long-Term Assets. For OLTFs that hold infrastructure assets, we suggest allowing flexibility for a fixed-term structure given the difficulty of applying an evergreen structure to longer-dated infrastructure projects such as communications networks or midstream systems. Infrastructure projects are often better suited to fixed-term structures given the long-term capital requirements needed to support extended development and operational timeframes.⁷ Furthermore, fixed-term structures can offer clear exit strategies for investors, offering greater predictability in planning returns and portfolio risk management. We submit that permitting both structures in OLTFs is critical to supporting execution of a fund's investment strategy and alignment with the nature of the underlying assets.

We urge the OSC to also allow greater flexibility in the requirement that an OLTF invest through the securities of underlying CIVs. We submit that solely relying on CIVs would be insufficient to manage OLTFs efficiently. Additionally, the proposed 10% ownership limit by OLTFs in any one CIV will create capacity issues and impede the ability of OLTFs to utilize fund-on-fund and master-feeder fund structures. OLTF investment fund managers should be permitted to gain access to Long Term Assets through special purpose vehicles ("**SPVs**") in addition to CIVs to effectively deploy capital and diversify investments. We note that SPV investment terms and requirements can be customized to co-invest alongside other private asset funds or direct private asset investments, ensuring effective capital deployment and diversification while meeting the minimum level of long-term asset requirements for OLTFs.

In addition to the above, we submit that the Proposed Framework will be less meaningful to utilize if it has restrictions placed on minimum investments in Long-Term Assets domiciled only in Ontario. Recent findings demonstrate that Ontario's private equity market represents just a small fraction of the worldwide marketplace.⁸ Imposition of Ontario-based limits would result in insufficient investment opportunities to build a well-diversified portfolio. As a result, we believe that OLTFs would carry significant concentration risk as a result.

Eligibility for Registered Plans

While not expressly raised within the Proposed Framework, in our view, to enhance access to Long-Term Assets retail investors should have the ability to hold their OLTF in a registered plan

⁷ CBRE Investment Management. (2024). *Open-End Funds: Time is Money in Infrastructure's New Era*.

⁸ Data from Preqin notes that global private equity net asset value was US\$7,623B, with Canadian net asset value totaling US\$101B (~1.3% of global private equity). Of this figure, Ontario specifically accounts for US\$66B (~0.9% of global private equity). Similarly, the United States completed 11 times more private equity deals than Canada and raised approximately 50 times the amount of capital.

(e.g., registered retirement savings plans). This means that securities of the OLTF will need to be a qualified investment under the *Income Tax Act* (Canada) and the regulations thereunder (collectively, the “**Tax Act**”).

Registered plans are an appropriate vehicle to hold OLTF securities as these private market assets typically have a long-term investment horizon which aligns with the goals of registered accounts that are used to fund spending in retirement. Registered plans are also a primary source of capital for retail investors.

In the 2024 Federal Budget, the Department of Finance launched a consultation on qualified investments rules in the Tax Act. In response to the consultation, various industry organizations and companies made submissions, several of which focused on changes to the qualified investment rules with the intention of getting retail clients access to private assets. We encourage the OSC and the Department of Finance to work together to ensure alignment across securities and tax regulation in the development of the OLTF aimed at granting retail investors access to Long-Term Assets. We submit that doing so will provide retail investors with more opportunities to access Long-Term Assets through investment fund product structures while also providing an additional source of capital for Long-Term Assets.

Governance

We acknowledge that the unique nature of Long-Term Assets may expose OLTFs to atypical risks such as liquidity risks or valuation challenges associated with holding Long-Term Assets. However, we believe that the proposed structure of OLTFs and the requirement for OLTFs to maintain an independent board of directors to address matters concerning the OLTF is costly and unnecessary. In our view, the current regime under National Instrument 81-107 *Independent Review Committee for Investment Funds* (“**NI 81-107**”) already provides for an appropriately robust governance mechanism whereby independent review committees (“**IRC**”) provide sophisticated, impartial judgement to investment fund managers on a wide range of matters.

In Mackenzie’s experience, the breadth of knowledge, independence and rigour of existing IRCs is sufficient to respond to the challenges posed by investments in Long-Term Assets. Exemptive relief granted by the OSC to Mackenzie for the Mackenzie Northleaf Private Credit Interval Fund which invests in Long-Term Assets deemed the appointment of an IRC pursuant to NI 81-107 to be sufficient to meet the requirements of the requested relief.⁹ The criteria for IRC selection coupled with the requirements under section 3.15 of NI 81-107 already mandates IRC orientations and the provision of educational programs necessary to enhance IRC skills and competencies¹⁰, and we would expect that managers with OLTFs would consider IRC membership accordingly. This perspective is consistent with a recent CSA Staff Notice which noted that all IRCs reviewed sufficiently demonstrated knowledge, experience, competencies and relevant skill sets to effectively perform their function as an oversight body.¹¹ These and other requirements demonstrate that IRCs are well-equipped to perform their role in maintaining

⁹ *Mackenzie Financial Corporation et al. (Re)*, 2022 ONSEC 1 (2022).

¹⁰ National Instrument 81-107: *Independent Review Committee for Investment Funds*.

¹¹ CSA Multilateral Staff Notice 81-337: *Targeted Continuous Disclosure Review and Guidance for Independent Review Committees for Investment Funds*.

objectivity and protecting the interests of investors.

One potential solution to addressing the increased potential risk associated with Long-Term Assets outside of introducing a new cumbersome governance regime would be modifying existing offering documents. While Mackenzie does not endorse a new form of fund facts or management report of fund performance, the OSC could consider introducing flexibility in existing forms to require more comprehensive risk disclosures and explanations of the strategies used to mitigate these risks for OLTFS holding Long-Term Assets.

We submit that an overly prescriptive governance regime would be detrimental to the OSC's stated goals under the Proposed Framework to facilitate investments in Long-Term Assets and foster conditions for capital formation and innovation in public and private markets.

Distribution

We are generally supportive of the OSC's position on distribution of OLTFS. We agree that where an OLTFS is a mutual fund, the securities should be distributed by mutual fund dealers that currently distribute alternative mutual funds. In our view, an OLTFS mutual fund, while investing in different asset classes than alternative mutual funds does not represent a significant departure from alternative mutual funds in terms of its complexity, and therefore should follow the same distribution rules.

However, any distribution proposal for OLTFS needs to be considered within the larger regulatory framework of suitability. In particular, we believe that prescribed limits on OLTFS investments should be determined by the investor's dealer or advisor rather than setting a specific limit on the amount an investor can invest in an OLTFS. This is appropriate given the additional protection mechanisms afforded by independent oversight of IRCs as noted above. It is our experience that determinations of suitability are highly client-specific, necessitating a client-focused lens that is based on a particular customer's investment profile as set out in the client-focused reforms.¹² Dealers and advisors must consider the "know-your-client" information with the product's characteristics and are therefore best-positioned to determine what the limits should be for any OLTFS investments.

Finally, as we indicated at the beginning of our letter, we strongly believe that the Proposed Framework will be less impactful if the regime is only accessible to Ontario investors. We submit that it may also be impractical for managers to operate OLTFS without a single, harmonized set of rules as it could prohibitively increase legal and compliance risks. This will ultimately result in fewer opportunities for retail investors to gain exposure to Long-Term Assets. In our view, a national approach would ensure investor protection standards are consistently applied across the country and serve to maintain investor confidence and trust in the larger regulatory framework. Again, we strongly encourage the CSA to participate in the consultation and rule-making process.

¹² Ontario Securities Commission. (2019). *Reforms to Enhance the Client-Registrant Relationship (Client Focused Reforms): Notice of Amendments to National Instrument 31-103 and Companion Policy 31-103CP*.

Conclusion

We thank you for the opportunity to provide comments on the Proposed Framework. We would be pleased to engage with you further on this topic. Please feel free to contact Mark Sandor at mark.sandor@mackenzieinvestments.com, Jessica Schnurr at jessica.schnurr@igmfinancial.com or myself, if you wish to discuss our feedback further or require additional information.

Yours truly,

MACKENZIE FINANCIAL CORPORATION



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