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April 15, 2011

Mr. Carlos Panksep, General Manager
Centre for Fiduciary Excellence (CEFEX)
2255B Queen St. East, Suite 406
Toronto Ontario M4E 1G3, Canada

Re: CEFEX Certification of Investment Advisers

Dear Mr. Panksep:

At your request, we have reviewed the process developed by CEFEX for assessing whether an investment advisor meets the global fiduciary standard of excellence (the "Fiduciary Standards") as defined by the *Prudent Practices of Investment Advisors (U.S. Edition)* handbook published by Fiduciary 360 (fi360) (the "Handbook"). In conducting that review, we have examined various documents (referred to below) that you have provided to us and had discussions with you and representatives of fi360 regarding the manner in which the assessment is conducted. The purpose of the review was to determine whether the assessment process is adequate for its intended purpose.

Summary of Conclusions

In reliance on the analysis, assumptions and limitations that follow, and on such other matters as we have deemed relevant, we have concluded that:

(1) The assessment process, when carried out by an Accredited Investment Fiduciary Analyst (or AIFA)[1] in accordance with the CAFÉ (described below), will enable CEFEX to make a finding of whether or not an investment advisor is meeting the Fiduciary Standards;

(2) The issuance of a Certificate of Registration by CEFEX following the conclusion of the assessment process will properly reflect that the investment advisor is generally meeting the Fiduciary Standards for the matters and for the time period covered by the Certificate (subject to the limitations on scope expressed in the CEFEX opinion that accompanies the Certificate); and

[1] An AIFA is an individual who has received training from fi360 in the process of conducting a fiduciary assessment. To obtain the designation, the individual must complete a classroom course, pass an examination and meet certain educational and/or work experience requirements. For details regarding this training, see http://www.fi360.com/main/center_studies_aifa_classroom.jsp.

(3) An investment advisor providing advice to retirement plans subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), who receives a Certificate of Registration from CEFEX following the conclusion of the assessment process will have demonstrated that, as of the date of the assessment, it had procedures and practices in place that equal or exceed the fiduciary requirements of ERISA.

The foregoing opinions should not be relied on without a thorough reading of the analysis contained in this letter and the materials on which is it based.

With respect to the last of these three issues, we address ERISA because it is the single body of law in the United States for which there are well-developed regulatory and judicial interpretations regarding fiduciary duties generally. Therefore, it is appropriate to look to ERISA and the commentary and interpretations of that law for purposes of developing a set of overall "best practice" fiduciary principles and the enforcement of fiduciary duties.

Finally, we note that these conclusions are based on our review of the CAFÉ, the Handbook and applicable laws, rules and regulations in effect as of the date this letter (or which has been issued in final form even if the effectiveness of the guidance has been delayed to a later date); and we do not undertake to update this opinion in the event of subsequent material changes in the documents reviewed or such legal precedent.

Background

You have provided us with materials developed by fi360, including the Consultant's Assessment of Fiduciary Excellence for Investment Advisors (U.S. Edition) (the "CAFÉ") and related materials, that are used by an AIFA in conducting an assessment of whether an investment advisor meets the Fiduciary Standards identified in the Handbook.[2] The Handbook identifies 33 "best practices" in which an investment advisor should engage in order to meet its fiduciary standard of care to its clients in providing investment advice.

The purpose of the assessment is to determine whether the investment advisor will receive a Certificate of Registration from CEFEX which confirms that the advisor meets the Fiduciary Standards.

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[2] Fiduciary 360 has developed CAFEs for the assessment of investment managers, investment stewards, and other specialized applications. The analysis discussed in this letter is limited to the CAFÉ for investment advisors.

The assessment under the CAFÉ requires that the AIFA review a statistically valid sample of the advisor's written materials and randomly selected client files, interviews with personnel of the advisory firm, analysis of the advisor's investment processes and confirmations from a statistically valid sample of the advisor's clients. The review applies only to the investment advisory processes of the investment advisor, is designed to analyze the processes used by the advisor in advising clients on the selection and monitoring of investments or investment managers for their assets, and does not address accounting, banking, consulting or other financial aspects of the advisor's business. Further, the review is not designed to determine whether the advisor is complying with the Fiduciary Standards with respect to any particular client and is conducted in reliance on the materials provided by and representations made by the advisor to the analyst conducting the assessment.[3] Finally, the CAFÉ is not designed to determine whether the advisor has engaged in prohibited transactions under ERISA or other applicable laws or may be liable for the conduct of other fiduciaries under applicable co-fiduciary liability principles (such as those contained in ERISA).

The AIFA is required to maintain detailed work papers documenting the review process and to note areas of non-conformance by the advisor using a Non-conformance Report (or NCR) or Opportunities for Improvement (or OFI) report. Upon completion of the assessment, the AIFA delivers a draft report, along with supporting materials and any NCRs or OFIs created during the assessment process, to the CEFEX Registration Committee (CRC) for review.

In addition to ensuring impartiality, the CRC's role is to verify that the AIFA competently conducted the assessment, that the proper information was gathered and reviewed and that a sufficiently large sample of advisor information was obtained to make the analysis statistically valid.[4] Following its analysis of the draft report and other materials, the CRC makes a decision whether, on the basis of the available evidence, to issue a Certificate of Registration to the advisor. If issued, the Certificate will be valid for twelve months.

We note that the issuance of a Certificate of Registration to an investment advisor does not guarantee that the advisor is in compliance with all legal or ethical standards in

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3 The assessment does not and realistically cannot determine whether the advisor is engaging in fraudulent or illegal activities or whether the materials it has provided to the analyst are complete and accurate.

4 We understand that for these purposes you utilize the statistical sampling standards used by the International Organization for Standardization, which requires that the AIFA review a number of records equal to the square root of the total available records. We assume for purposes of our analysis that this is a proper measure for determining statistical validity.

general or whether the advisor is meeting those standards with respect to any individual client. (These limitations and others are reflected in the opinion delivered by CEFEX that accompanies the Certificate.) What the Certificate of Registration does signify is that in general, the advisor is able to demonstrate that its business practices meet the fiduciary standards indicated in the Handbook.

Discussion

We have prepared memoranda that discuss the legal support for each of the practices identified in the Handbook in a variety of fiduciary settings. In so doing, we reviewed the Employee Retirement Income Security Act of 1974, the Uniform Prudent Investor Act, the Management of Public Employees Retirement Systems Act and the Uniform Prudent Management of Institutional Funds Act but did not examine the law of any particular state. We compared the Fiduciary Standards to the requirements of each of these Acts and found them to enunciate, with some variations, the same fundamental principles in each of those laws.

While the practices defined in the Handbook are intended to represent fiduciary "best practices" that equal or exceed generally accepted fiduciary principles imposed by applicable federal or state laws, specific laws may contain provisions that are different from, inconsistent with or, in limited situations, contrary to these best practices. As a result, we are unable to state that the practices identified in the Handbook satisfy every provision of every applicable law. Nevertheless, we believe that they do reflect the obligations of fiduciaries generally across a broad spectrum of legal arrangements. That is, looked at broadly and without reference to any legal requirements of any specific jurisdiction, investment fiduciaries have an obligation to:

(i) act in the best interest of their clients,

(ii) avoid conflicts of interest,

(iii) act for the exclusive purpose of providing their clients with a return on their investments consistent with the client's goals for capital preservation or return on investment, time horizon and risk tolerance, and

(iv) follow generally accepted investment theories and prevailing industry practices in advising their clients with respect to their investments.

Whether or not a fiduciary is meeting these standards is measured under the prudent person rule, which requires a fiduciary to act only within the range of its competence and to engage in a process of obtaining and analyzing relevant information, making reasoned and informed decisions based on that information, periodically re-examining those decisions (where the engagement is on-going) and maintaining adequate records to reflect the process in which it engaged.

In our view, the practices identified in the Handbook address these requirements and, when followed by an investment advisor, would indicate that the advisor is following a prudent fiduciary process and, therefore, fulfilling its fiduciary obligations to its clients. To the extent the assessment conducted by an AIFA using the process set out in the CAFÉ, based on a statistically valid sample of the advisor's clients and other records, is able to verify that an advisor is following the practices in the conduct of its business, CEFEX will be able to conclude that the advisor is meeting the Fiduciary Standards.

Our review of the assessment process consisted of an analysis of the steps required in the CAFÉ (and related documents) for verifying information regarding the conduct of the advisor's business. We then compared those steps to the requirements for fiduciary conduct generally and to the practices identified in the Handbook and determined that the steps, if properly carried out, would generally support a conclusion on whether the advisor was following the practices. We note that in the course of conducting an assessment, the AIFA may determine that the advisor is not fulfilling certain of the practices and, in that case, is required to complete a "non-conformance report" or NCR. We understand that any NCRs prepared by the AIFA (along with other supporting materials) are delivered to the CRC along with the draft report and recommendation regarding certification of the advisor. We further understand that the CRC takes the NCRs into account in determining whether to issue a Certificate of Registration to the advisor and declines to issue a certification if the AIFA identifies material areas of non-conformance.

As indicated earlier, in conducting our analysis, we have looked to ERISA for general fiduciary principles. In this context, we note that ERISA requires that fiduciaries involved in the investment process adhere to generally accepted investment theories, such as modern portfolio theory, and prevailing industry practices in making investment decisions. The determination of whether an investment advisor is adhering to this requirement is outside our area of expertise as lawyers. However, fi360 and CEFEX have represented to us that the assessment under the CAFÉ will demonstrate whether an investment advisor is generally meeting this requirement in advising its clients. Insofar as our opinion regarding compliance with the fiduciary requirements of ERISA relates to these investment processes, it is based (without independent verification) on that representation and made in reliance on the position of fi360 as an expert in investment matters.

Based on our review of the CAFÉ and other materials and our understanding of the CRC's process in analyzing the information presented to it by the AIFA who conducted the assessment, we have concluded that CEFEX may validly determine whether or not an advisor meets the Fiduciary Standards. Further, we have concluded that when CEFEX issues a Certificate of Registration, the Certificate reflects that the investment advisor is generally meeting the global fiduciary standard of excellence for the matters and for the time period covered by the Certificate, subject to the limitations expressed in the CEFEX opinion that accompanies the Certificate.

Very truly yours,

Drinker Biddle & Reath LLP

By Fred Reish
C. Frederick Reish