

## SERVICE

# Public Funds

Our top-tier Investment Funds Group advises clients on all aspects of public fund activities.



## Related Expertise

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Publicly-offered investment funds form an integral part of the financial services sector. Increased regulatory scrutiny and compliance requirements are having a significant impact on the industry as business becomes more complicated, the cost of doing business rises, and the consequences of non-compliance become more significant. In addition, increased competition and a regulatory focus on transparency has contributed to downward pressure on fees.

In this challenging climate, industry players must continually work to not only protect, but grow, their market share, using strategies such as expanding their product lines, developing their base of clients and investors, and introducing innovative products. They need legal guidance that will help them meet their business goals while successfully dealing with the tough issues they face every day. Osler's top-tier Investment Funds Group, recognized with a Band 1 ranking in *Chambers Canada*, provides that advice. Our lawyers have unparalleled expertise in advising clients on all aspects of public fund activities. Osler has broad experience advising on the formation, distribution and management of mutual funds, exchange-traded funds (ETFs), and liquid alternative funds, as well as related fund reorganization and M&A transactions involving industry participants.

Osler advises on the securities law registration issues associated with the public fund industry. Our lawyers provide strategic advice to dealers and advisers whose platforms include public funds, with our broad experience to help them meet their compliance obligations and navigate regulatory expectations.

Our team includes experts in securities regulation, tax, pensions and corporate law who provide highly specialized services to meet the needs of sophisticated clients. This enables us to offer Canadian and non-Canadian clients of all sizes the guidance they require to achieve their business objectives while meeting their regulatory obligations.

Osler is innovative in the Canadian public fund industry and has advised on a number of "firsts" in the industry, including the first Canadian financial institution to enter the Canadian ETF market, the first closed-end fund to convert to an ETF, the first M&A transaction involving a Canadian ETF manager, the first cooperation services arrangement between major unaffiliated fund providers resulting in co-branded ETF offerings, and the world's first bitcoin ETF, following the world's first public bitcoin and ether funds. Our firm also developed the market standard cryptocurrency custody arrangements which are currently applied in all

public direct cryptocurrency-investing funds/ETFs. Osler pioneered the implementation in Canada of an investment fund platform that integrates both ETF and conventional non-listed mutual fund securities in a single fund structure.

Our focus is on building long-term, ongoing relationships with our clients and working with them to develop the solutions they need by providing legal counsel, risk assessment advice and business judgment.

## Fund and product creation and structuring

Osler acts as primary counsel to Canadian and U.S. investment fund managers on the formation and structuring of a wide range of public investment products and investment strategies, including

- Funds structured as single and multi-series trusts, partnerships or corporations.
- Index-tracking and actively-managed ETFs.
- Funds of funds.
- Currency-hedged funds.
- Liquid alternatives funds, and
- Closed-end funds, including funds that automatically convert to ETFs or mutual funds.

Our lawyers assist investment managers with the preparation of:

- Prospectuses.
- Offering memoranda.
- Trust agreements/limited partnership agreements, and
- Investment management agreements.

Osler specializes in innovative investment fund structures and has experience advising clients regarding:

- Multi-manager funds that engage non-Canadian investment managers as sub-advisers.
- Fee structures involving management and/or incentive/performance fees charged inside or outside of the investment fund, and
- Pension and tax structuring issues, including pension plan eligibility, registered plan eligibility and withholding tax issues.

## Ongoing operations and transactions

Our firm provides clients with ongoing advice on their investment management and marketing and distribution activities, including

- Acting for Canadian financial institutions in relation to their investment management activities, and obtaining exemptive relief to address conflict matters arising from their multiple business activities and structures.
- Advising Canadian, U.S. and U.K. investment managers on firm registration and exemption matters, as well as investment fund distribution issues, in addition to advising their dealer affiliates on registration applications for membership in their applicable self-regulatory organization.

- Providing guidance to advisers, investment fund managers and distributors, and independent review committees regarding their fund-related activities, including on fund governance and conflict of interest matters.
- Negotiating investment management, sub-advisory and custodial agreements.
- Advising on IDSA agreements, securities lending, share repurchase and reverse repurchase agreements.
- Structuring and implementing restructurings of fund vehicles, including fund mergers, extensions and wind-ups, and
- Offering advice on acquisitions and divestitures within the investment funds industry.

## Industry involvement

The investment funds and asset management industry turns to our lawyers for their expertise, with regulatory, self-regulatory and industry bodies regularly seeking our advice. Osler lawyers have served on the following committees:

- OSC Advisory Committee on Investment Funds.
- Portfolio Managers Association of Canada (PMAC) – Industry Regulation & Taxation Committee, and PMAC member forums, and
- Investment Funds Institute of Canada (IFIC) – Legal and Compliance Issues Committee.

In addition, our lawyers have advised industry associations and clients on pending or developing securities regulatory and income tax legislation.

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## Key Contacts



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Partner, Corporate, Toronto

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## Awards and Recognition

- **Chambers Canada: Canada's Leading Lawyers for Business:** Recognized in Investment Funds (Band 1); Investment Funds: Fund Formation (Band 1)
  - "The individual lawyers and their expertise have been a tremendous asset to us. They are extremely knowledgeable, particularly in the area of mutual funds."
  - "They understand our needs, risk profile, and conditions under which we operate. I have ultimate confidence that they are looking at the transaction in the same way as we are."

- **The Canadian Legal Lexpert Directory:** Recognized in Investment Funds & Asset Management (Toronto, Ontario; Montréal, Québec)