British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Re: Comments on proposed amendments to National Instrument – 81-102

These comments are in response to the mutual fund modernization proposals and the changes to the National Instruments and related policies as a result of the implementation of phase 2 in the process of harmonizing the rules for closed-ended funds with those for open-ended mutual funds.

I have a background in the securities regulatory environment. I understand the move to merge similar types of investments into the same regulatory regime, and both agree and fully support a consistent approach if appropriate. However, my concerns relate to the future impact that these changes, together with past changes, may have on closed-ended funds as the rules become parallel and specifically, concerns with respect to the ability of a closed-ended fund to raise capital as a result of the amendments to the rules. If closed-ended funds satisfy an investment objective, there should be concerns if the proposed changes could negatively impact the ability of any existing closed-end fund to raise capital.

Closed-ended funds, by their nature, are materially different from open-ended mutual funds who are redeeming units and accessing new capital and new investors on a daily basis at net asset value ("NAV"). A closed-ended fund has very limited redemption provisions and, if such a closed-ended fund is listed on the Toronto Stock Exchange (the "TSX"), it trades at market (which differs from NAV). For example, one existing closed-ended fund only redeems units to a specified limit once a year at a reduced percentage of NAV. Unit holder liquidity is realized through trading on the TSX which traditionally is at a discount to NAV. Given the strict limitation on redemptions, the most important unit value to an investor is the TSX trading price. When the manager of a closed-ended fund determines it is appropriate to do so financing is raised by private placement or prospectus offering at prices which must satisfy the TSX rules.

One of the proposals speaks to eliminating the warrant offerings that have been used successfully for many years by closed-ended funds. These warrant offerings are structured the same as a rights offerings (with the only possible difference being that some rights offerings choose to have a non-mandatory stand-by commitment). There is a warrant, or right, to purchase a specific number of units based on a unit holder's existing ownership. The ability exists to sell the warrant or right on the TSX should a market develop and there is an additional subscription process and procedure. These warrant offerings are like a rights offering and provide a cost effective mechanism whereby existing small retail investors can participate in financings at a minimal cost. Eliminating this form of warrant financing (or rights offering) as the proposed amendments will do also make it harder for existing small retail unit holders of these funds to participate in future financings. If the manager of a closed-ended fund now needs to switch to

other types of permitted financings (by way of either prospectus or private placement), there may be a more severe dilutive impact on existing unit holders in the end, depending on the underwriters negotiated offering price (which is normally at a discount to TSX trading price). Small existing retail investors would rarely be part of a private placement and participation in any underwriting may not be that easy or practical. What the proposal is saying is that a closed–ended fund is not permitted to go to an existing unit holder for financing but it is permitted to raise capital from a new unit holder. Clarification is required with respect to whether there will similar restrictions on rights offerings and the reasoning for this proposed rule disclosed.

Another of the proposals speaks to a 30% limit on debt financing and limiting any debt financing to banks only regardless of the terms or best interests of unit holders. This proposal would appear to further restrict a closed-ended fund from raising debt financing by offering debt instruments or convertible debt or preferred instruments by private placement or prospectus offering .The terms of these conventional debt or preferred instruments could be significantly better for the Fund then bank financing .Clarification is required in the policy.

When a closed-ended fund files a prospectus or determines a price for a private placement financing, the pricing and the relationship between NAV and market price would be a material consideration. As is the practice with any private placement or prospectus offering by a TSX listed issuer, the offering price is determined through arm's length negotiations with an underwriter in reference to the current trading price of the security on the TSX (as per the TSX rules). The final negotiated price can be at a discount to market and in the case of a closed-ended fund that will generally be a further discount to NAV. Since most closed ended funds historically trade below NAV ,the underwriting commission and any additional discount to market price would result in additional dilution to an existing unit holder. As discussed above ,with the proposed rule changes to warrant offerings or rights offerings existing unit holders will not be able to mitigate any loss as they will be limited or have no ability to participate in this dilutive financing. If the offering price is set at a premium to market (to be closer to NAV), the success of a financing should be questioned as it would require a new investor to purchase from the offering at a premium to market when the new investor could simply buy at a lower price in the secondary market. A new investor would also be reluctant to invest as historical trading data would also suggest that the TSX trading price will fall to a price below NAV and the offering price. I question if any underwriter would be interested in participating in such an offering as both NAV and the market price would be a consideration impacting the underwriters ability to sell the offering .If that is the case, and given all the rule proposals discussed above, a closed ended fund may be unable to readily complete any financing at all.

A closed-ended fund to satisfy its objectives needs to raise capital as it allows the manager to make critical new investments, manage its investment portfolio and meet its distributions. An increase in units can also help improve trading volumes and liquidity which is important given the limited redemption provisions of closed-ended funds.

If we continue to want closed ended funds, their ability to access the capital markets and efficiently raise capital needs to be maintained.