K. Michael Edwards
Chairman, President and Chief Executive Officer

RTIM LETTERHEAD

August 24, 2001

Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario
M5H 3S8

Attention: ***John Stevenson, Secretary***

Dear Sirs/Mesdames:

Re: Notice of Proposed Amendments to OSC Rule 45-501

This submission is in response to the Ontario Securities Commission's (the "Commission") request for comments with respect to Notice of Proposed Amendments to Rule 45-501 (the "Proposed Amendments"). These comments are made by RT Investment Management Holdings Inc. ("RTIM"), a holding company for the discretionary investment management businesses of the Royal Bank of Canada on behalf its investment counselling subsidiaries (collectively the "RTIM Business Units"). The RTIM Business Units consist of Royal Bank Investment Management Inc., RT Capital Management Inc. and RBC Private Counsel Inc. which manage over $75 billion of client assets in aggregate across Canada. RTIM thanks the Commission for allowing an extension to the delivery of this submission

The RTIM Business Units are significant players in the discretionary investment management industry in Canada. As such, with all due respect to those involved in the creation of the proposal, we are concerned that the Proposed Amendments appear to have been drafted without input from all key stakeholders such as ourselves. Specifically, the Proposed Amendments originated in the 1996 *Report of the Task Force on Small Business Financing*. We note that the Task Force on Small Business Financing (the "Task Force") was established by the Commission to make recommendations for a regulatory framework governing the *raising of capital by small and medium-sized businesses*. Its

membership included representatives of the investment dealer and legal communities but to the best of our knowledge, no representatives from the discretionary investment management industry. Our understanding is that staff of the Commission adopted the Task Force's report as the basis for its recommendations for implementation as set out in its 1997 concept paper - *Revamping the Regulation of the Exempt Market* (the "Concept Paper"). As the title of the Concept Paper suggests, the scope of the original project as set out in the Task Force's mandate was expanded and the Concept Paper included additional recommendations which we believe were made without reference to representatives of the discretionary investment management industry. Certain changes introduced in the Proposed Amendments have profound implications for the discretionary investment management industry and these changes appear not to have been subject to any analysis of their potential impact.

Our main concern stems from the impact that the Proposed Amendments will have on the ability of discretionary investment managers to use non-prospectus qualified mutual funds ("pooled funds") to manage client accounts. Pooled funds play an important role in discretionary investment management and provide important benefits to investors as they allow a discretionary investment manager to manage client accounts at lower cost than managing accounts on a segregated basis. Although exact figures are not available, we believe that over $100 billion of client assets are invested in pooled funds in Canada. In their roles as discretionary investment managers, each RTIM Business Unit makes extensive use of pooled funds to benefit their clients. Currently, the RTIM Business Units together manage almost $10 billion of client assets through investment in over 30 in-house managed pooled funds.

In the Concept Paper, it was recommended that the definition of an "accredited investor" should include a "managed account" as defined in the *Rule 45-504* (the "Sprinkling Rule") and the Sprinkling Rule should be repealed. While the Sprinkling Rule expressly provides that it cannot be relied upon for distributing pooled funds to a managed account, we note that in *Notice of Proposed Rule 45-504*, the Commission indicated that pooled funds should be sold by way of prospectus exemption *otherwise available* and contemplated that separate relief with different restrictive conditions than the rule would be necessary to allow a portfolio manager to sell pooled fund units to a managed account. When the Sprinkling Rule was enacted, other prospectus exemptions were available to discretionary investment managers to sell pooled funds to managed accounts and the Commission did not repeal any prospectus exemptions nor did it repeal any of the sprinkling orders previously issued to portfolio managers in connection with pooled funds. In *Notice of Rule 45-504*, the Commission stated that "it continues to be of the view that the issues which arise in the context of developing an appropriate regulatory response to portfolio advisers who require more flexibility in the use of pooled funds to better serve their discretionary managed account clients are different from those addressed by the Rule and will be considered by the Commission in that context." We agree that a well reasoned regulatory response is required and we have been awaiting such a regulatory response. At this point, we strongly urge the Commission to now proceed in developing the appropriate regulatory response re: pooled funds but only after consultation with all stakeholders. Unfortunately, the Proposed Amendments as they stand constitute a regulatory response without the relevant consultation as the proposed rule will incorporate the Sprinkling Rule which was not intended to address pooled funds.

To prepare an appropriate regulatory response, an understanding of the use of pooled funds in discretionary investment management is essential. An investor seeking discretionary investment management is typically a corporation, pension plan or affluent individual who does not have either the time, expertise or inclination to manage their investments. A portfolio of securities based on the client's investment objectives and risk tolerance is created and managed on an ongoing basis for the client who is interested in the risk and return of the portfolio rather than the risk and return of individual securities in the portfolio. Pooled funds offer important benefits to investors. Professional discretionary investment management services are generally provided to investors on either a segregated basis or pooled basis. Managing client accounts on a segregated basis requires relatively large accounts to allow adequate diversification and to provide sufficient fees to cover the higher costs associated with the ongoing management of the account to ensure that the individual securities held in the account match the target weighting specified by the client's investment objectives at all times. A pooled fund holding the same securities that would be held in a segregated account is a much more effective and cost efficient method of managing many accounts. Pooled funds provide proper diversification for smaller accounts and facilitate ongoing rebalancing to match the client's investment objectives. Due to the cost efficiency, clients with smaller accounts can be offered more economical fees.

While the Commission recognizes that a regulatory response is required for portfolio advisers who require more flexibility in the use of pooled funds to better serve their discretionary managed account clients, the Proposed Amendments are problematic. Discretionary investment managers currently using pooled funds to manage client accounts will be forced to either prospectus qualify existing pooled funds or liquidate units of pooled funds held in client accounts.

In connection with prospectus qualifying pooled funds, it is important to examine prospectus qualification in the discretionary investment management context. The costs of prospectus qualification come in the form of legal fees associated with the initial drafting and ongoing revision and renewal of the prospectus. However, the benefits of prospectus qualification, namely disclosure and rights of action for rescission and damages, are irrelevant in the context of pooled funds managed by a discretionary investment manager for its client accounts. The client has delegated to the investment manager all investment responsibilities including the review of prospectuses and the exercise of any rights of action for rescission or damages. The client is not interested in the individual securities in his portfolio and does not receive or desire copies of prospectuses. Instead, the client has recourse against the investment manager for the performance of the portfolio based on the discretionary investment management contract. Consequently, while it may be possible to prospectus qualify all pooled funds currently used to provide discretionary management, there is no apparent rationale for requiring such action as there is no benefit to the client, only increased costs which will eventually be passed through to the investor in the form of higher fees.

With regard to liquidating investments in pooled funds, such action may be required since distributions paid to unitholders and additional funds supplied by the client will have to be invested in alternative investments. To have sufficient funds to purchase such alternative investments and to obtain

appropriate diversification and properly balance the account in accordance with the client's investment objectives, units of pooled funds may have to be liquidated. This may have serious adverse tax consequences to clients.

If the Commission is determined to proceed with the Proposed Amendments, at a minimum, it should be aware that prospectus qualification is a process which requires some time to complete. Prospectus qualification may also require amendments to the underlying trust documents which may require additional time for unitholder meetings and approval. In view of the potential adverse impact on investors, transitional rules to mitigate such impact are important and it is disconcerting that there has been no consideration of such issues in the Proposed Amendments. We therefore request the Commission to take this into consideration.

In summary, the Proposed Amendments set out a significant policy change that has major adverse consequences to discretionary investment managers and consequently, their clients. The discretionary investment management industry includes both registered portfolio managers and trust companies. These sectors should be actively involved in working with the Commission on this initiative. We therefore strongly urge that any revamping of the exempt market be delayed until all of the issues and affected stakeholders can be canvassed, not just those issues and parties involved in raising capital for small and medium-sized businesses which was the original thrust of this major policy change.

We wish to thank the Commission for the opportunity to comment on this significant policy change and trust that our comments will be given full consideration. If you have any questions, would be pleased to speak directly with you on any of the matters raised.

Yours truly,

RT Investment Management Holdings Inc.

K. Michael Edwards
Chairman, President and Chief Executive Officer