AIM TRIMARK

Susan J. Han
Senior Vice President & General Counsel

5140 Yonge Street, Suite 900
Toronto, Ontario M2N 6X7

Telephone: 416.228.4789
Facsimile: 416.590.1621

susan.han@aimtrimark.com

www.aimtrimark.com

Via email

August 25, 2005

The Member Commissions of the Canadian Securities Administrators

c/o Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario, M5H 3S8
Attn: Mr John Stevenson, Secretary

and

Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22 étage
Montreal, Quebec H4Z 1G3
Attn: Mme Anne-Marie Boudoin, Directrice du secretariat

Dear Sirs / Mesdames:

Re: Proposed National Instrument 81-107
Independent Review Committee for Investment Funds

AIM Trimark Investments is pleased to provide our comments to the Canadian Securities Administrators (CSA) in response to proposed National Instrument 81-107 Independent Review Committee for Investment Funds (NI 81-107). AIM Trimark (www.aimtrimark.com) is one of Canada's largest investment management companies with over $45 billion in assets under management. A subsidiary of U.K.-based AMVESCAP PLC, which is among the world's largest independent investment managers, AIM Trimark employs over 900 people in its Calgary, Montreal and Toronto offices. AIM Trimark offers over fifty separate mutual fund products to investors and their advisors.

We Believe in Independent Oversight

AIM Trimark has had in place an oversight body, our Funds Advisory Board, since 2000, well before this governance issue became topical.

Let us share the essential details:

- A majority of its members, currently 75%, are independent of AIM Trimark (the manager).
- Our definition of "independence" conforms to best practices (i.e., requires that the individual have no affiliation with the manager or its affiliates and is free from any business or other relationship which could reasonably be perceived to interfere with the individual's ability act in the best interests of the funds).
- The Board is chaired by an independent, non-management member.
  There are two standing committees of our Board, an Audit Committee and a Governance and Nominating Committee. Both Committees are composed entirely of independent members.
- Each Board meeting includes a session without management present.
- Each Committee meeting includes a session without management present. When the fund auditors are present, the Audit Committee spends time with the auditors without management present.
- A Board self-assessment process is in place.
- Continuing Board 'education' is part of the agenda.
- The independent Board members are able to retain their own professional advisors as needed and have done so.

These structures and practices enable the Board members to look critically at our funds, and protect and advance investor interests.

We believe that our Advisory Board advances investor protection because its broader mandate encourages the manager (AIM Trimark) to be pro-active. The Advisory Board does not merely prevent the manager from doing things that may be harmful to investors, but their presence encourages us to seek out best practices. Our Advisory Board questions us closely on many aspects of our performance, including but not limited to investment performance; they encourage better communication and reporting to investors; they oversee our system of internal controls. They are knowledgeable and rigorous. To align their interests with investors, each member is required to have a minimum holding in the AIM Trimark Funds and their holdings are publicly disclosed.

AIM Trimark does not wish to suggest that we would have been less than diligent in looking out for investors in the absence of our Advisory Board. To the contrary, AIM Trimark takes its fiduciary obligations, which exist quite apart from any oversight body, very seriously. It is part of our long established culture of providing enduring financial solutions to investors, and we believe we are an industry leader here. However, we recognize that individuals whose loyalty is not being pulled in two directions at once (to

the shareholders of the manager and to the investors in the funds) are able to bring a perspective to bear that the manager by itself cannot.

Our experience has shown us that mutual fund investors are best served by having some form of independent oversight of the funds. We believe this for the very reasons that underlie NI 81-107: that there are certain inherent conflicts of interest between those of a manager or sponsor of mutual funds and those of the investors in the funds themselves. We consider this to be self-evident and we are unpersuaded that an extensive cost/benefit analysis is required to prove a need for revisions to the existing regulatory framework for fund governance.

Just as financial capital requirements are prerequisites to be in the investments business, we believe that governance 'capital' requirements should also be an essential condition of operation.

In responding to earlier versions of NI 81-107, many commentators have said in essence that there is a lack of empirical evidence that the proposed changes would result in better outcomes for investors. AIM Trimark favours enacting proposals to require some form of independent oversight of mutual funds over engaging in further study and consultation in an elusive and ultimately fruitless search for "conclusive evidence".

IRCs and Advisory Boards

AIM Trimark Investments also established an Independent Review Committee (IRC) in November 2004 pursuant to certain regulatory relief. AIM Trimark has no objection to IRCs for mutual funds and believe they can perform an important function. We however view IRCs as a component in a more comprehensive governance framework. IRCs as contemplated by NI 81-107 are not the complete answer to effective fund governance.

Under NI 81-107, the IRC acts as a screen to prevent managers from acting in a way that is harmful to investors. As discussed above, we believe that measures such as those adopted by AIM Trimark, which encourage the positives, are more effective in protecting investors than measures which discourage the negatives.

So AIM Trimark would likely continue with the structure we have today, in which the IRC runs in parallel with our Advisory Board.[1] We have noted that in the commentary to section 4.1, the policy contemplates that the IRC could have a broader mandate. However, we would find this difficult to reconcile with the IRC having only those powers and authorities provided in the section, and with the explicit provisions that were put in

[1] There is another reason why AIM Trimark will continue our existing governance structure. Many of our funds are organized as corporations and are subject to corporate statutes which require the Board of Directors to be responsible to manage or supervise the management of the business and affairs of the corporation. In the case of AIM Trimark, in order to align the governance of the mutual fund trusts with the mutual fund corporations, the same individuals serve as directors of the mutual fund corporations and members of the Fund Advisory Board.

place to limit liability for IRC members, as discussed in the memorandum of Ms Carol Hansell of Davies Ward Phillips & Vineberg.

Specific Comments

We have some technical and other specific comments, as follows.

Application

We support the principle of applying the policy to all publicly offered investment funds. The *Notice and Request for Comments* states that the CSA believe that smaller investment funds should not be exempt from NI 81-107 by virtue of their small size alone, even recognizing that there is a corresponding greater cost impact because costs are spread out over a smaller investor base. We agree with this view. The size of a fund or fund complex should not determine whether investors do or do not enjoy the protections afforded by IRCs. The focus should be on the needs of the investor, and not of the fund companies. We find the barriers to entry argument unconvincing: according to recent statistics and press release issued by the Investment Funds Institute of Canada (IFIC)[2],

> The U.S. mutual fund industry has only about four times more funds than Canada despite a market size that is 20 times greater than Canada. This could indicate the diverse choice of funds Canadians have compared to their U.S. counterparts.

Certainly the recent data indicate that Canadian consumers are not disadvantaged in terms of choice and we find it difficult to believe that the requirement for an IRC will have any perceptible impact on the structure of the marketplace.

Materiality / Significance

We think the work of the IRCs would be greatly assisted by having a materiality or significance concept built into conflict of interest matters that the IRC must review. Perhaps the definition of "conflict of interest matter" in section 1.3 could address this.

We suggest that there is more than one way to think about materiality or significance. There are matters for which the appropriate measure of materiality is the extent of its financial impact on a fund. Conventionally, we ask: will the fund be affected by more than X basis points? There are other matters for which "basis points to the fund" is not the appropriate measure of "material" or "significant". The second group would be matters that are particularly sensitive or instances in which a reasonable person would regard the manager's position as utterly and hopelessly conflicted. An example of this type of "significant" conflict of interest matter might be a decision by the manager to charge the costs of error correction to a fund. The financial impact on the fund could be

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[2] See Press Release dated August 23, 2005 "Canadians Trust Mutual Funds for the Long Term" available on http://www.ific.ca/pdf/media/NewsRelease_Canada-USreviewEnglishwAtt_23Aug2005.pdf

minimal, but most reasonable people would agree that the manager is in no position to pass judgement on its own errors and to decide whether or not the costs should be borne by itself or the fund. But there may well be cases in which it is perfectly appropriate to charge certain error costs to the fund, for instance in the case of completely inadvertent and unavoidable errors. And the function of an IRC would be to decide.

Of course this may leave open the question of who, the manager or the IRC, decides which matters are material or significant and thus reviewable under Part 5. We would suggest that this be allowed to develop as a healthy dialogue between the manager and the IRC. The entire process will not work effectively without a certain measure of openness, co-operation, trust and goodwill between managers and IRCs. Those things cannot be legislated, and we would caution against too prescriptive an approach. Once a sound framework is in place, managers, IRCs and their professional advisors will work out the details.

Perhaps this is understood or to be read into NI 81-107, but we would find it helpful if there were a clear and unequivocal statement to the following effect: only actions or proposed actions where there is some doubt or ambiguity as to whether the investment fund could be harmed or disadvantaged need be referred to the IRC. The definition of "conflict of interest matter" should make clear that it excludes any matters that the manager chooses to resolve in favour of the investment fund, even if such matter might otherwise be one that "a reasonable person would consider the manager...to have an interest that may conflict with the manager's ability to act in good faith and in the best interests of the investment fund".

Definition of Independence

We commend CSA for adopting a more flexible and principles-based approach to the definition of "independence". The overly technical constraints found in previous versions were not workable and produced anomalous results.

Review Process

We find the process set out in Parts 4 and 5 to be quite complex and cumbersome. Again we wonder if this degree of detail is necessary. Could not IRCs be given their mandate and allowed work out a suitable process?

We are troubled by subsection 5.2 (2) which describes the determinations that must be made by the IRC before certain enumerated matters can be approved. We suggest that it will be difficult for an IRC to arrive at a decision that a proposed course of action "achieves a fair and reasonable result" for the fund. The first three determinations which the IRC are required to arrive at are mostly to do with procedure: did the decision-making process have integrity; were the policies and procedures complied with. They can be fairly easily satisfied by management providing certificates to the IRC. The "fair and reasonable result" decision asks the IRC to make a judgement as to outcome. Based on our experience, IRCs will want some support for this conclusion: reports of

professional advisors, such as lawyers or bankers. This could add complexity, substantial costs and delays. We would invite the CSA to consider whether meeting the first three requirements, as described in 5.2(2)(a)(b) and (c), does not go most of the way toward ensuring that the result is indeed "fair and reasonable", making paragraph (d) unnecessary.

Reporting to Regulators

We have some reservations about the provisions relating to reporting to regulatory authorities. Such reporting should obviously be reserved for the most serious cases, including where there has been a material breach of securities legislation. The CSA should be careful that these requirements do not inadvertently result in IRCs reporting what are merely differences of opinion. Investor protection will not be advanced by managers being constantly subject to second-guessing by IRCs. We would ask that the CSA consider expanding the commentary to this effect.

Term of Office / Frequency of Meetings

We would prefer more flexibility in the term of office, a minimum one-year term for example, simply because we elect directors for our mutual funds organized as corporations on an annual basis, and it is administratively easier if the terms can be consistent.

Our experience tells us that an effective board comes together as a group with a common purpose. There must be trust, familiarity with one another and with the business of mutual funds and good group dynamics. We question whether this can properly develop in an IRC that only meets once annually.

Further commentary

Thank you for the opportunity to provide our comments. We would be pleased to expand on the foregoing and respond to any questions at your convenience. Please feel free to contact the writer at 416-228-4789 or at susan.han@aimtrimark.com.

Yours very truly,

AIM TRIMARK INVESTMENTS
Susan J. Han
Senior Vice President & General Counsel

C Philip Taylor, President & CEO,
AIM Trimark Investments

Robert Luba, Chairman,
AIM Trimark Funds Advisory Board