June 20, 2007

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Nova Scotia Securities Commission
Registrar of Securities, Prince Edward Island
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

c/o John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor
Suite 1903, Box 55
Toronto, Ontario M5H 3S8

- and -

c/o Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22e étage
Montreal, Québec
H4Z 1G3

Dear Sirs/Mesdames:

Re: AIMA Canada's Comments on Proposed National Instrument 31-103 *Registration Requirements* and Proposed Companion Policy 31-103 *Registration Requirements*

This letter is being written on behalf of the Canadian chapter of the Alternative Investment Management Association (**"AIMA"**) and its members to provide our comments to you on proposed National Instrument No. 31-103 *Registration Requirements* and Proposed Companion Policy 31-103 *Registration Requirements* (**"NI 31-103"** or the **"Proposed Instrument"**).

AIMA was established in 1990 as a direct result of the growing importance of alternative investments in global investment management. AIMA is a not-for-profit international educational and research body that represents practitioners in hedge fund, futures fund and currency fund management – whether managing money or providing a service such as prime brokerage, administration, legal or accounting. AIMA's global membership comprises over 1,175 corporate members throughout 47 countries, including many leading investment managers, professional advisers and institutional investors. AIMA's Canadian chapter, established in 2003, now has 75 corporate members.

The objectives of AIMA are to increase investor education, to promote transparency, due diligence and related best practices and to work closely with regulators and interested parties in order to promote the responsible use of alternative investments.

For more information about AIMA and AIMA Canada, please visit our web sites at www.aima.org and www.aima-canada.org.

This comment letter has been prepared by a working group of the Canadian members of AIMA, comprised of hedge funds, fund of funds and accountancy and law firms with practices focused on the alternative investments sector, with input from non-Canadian representatives of AIMA.

General Comments

We support this CSA initiative to harmonize, streamline and modernize the registration regime across Canada, to provide protection to investors from unfair, improper or fraudulent practices, and thereby enhance capital market integrity. We feel that this initiative will assist market participants in conducting business in Canada.

It is our view that to achieve its stated objective of enhancing capital market integrity, NI 31-103 must ensure a level playing field among all capital market participants in Canada and assist participants in the Canadian capital markets in playing an active and competitive role in the global investment community. The Canadian capital markets are a very small portion of the global investment market, and, in our view, need to be supported by the regulators in a way that keeps them internationally competitive.

We urge the CSA to move forward with the Proposed Instrument with a view to ensuring that each jurisdiction passes uniform legislation and rules, and, more importantly, that staff in each jurisdiction administer and interpret the legislation and rules in a uniform and consistent fashion. We believe that the goals of the CSA can only be achieved if the local rules are entirely replaced by NI 31-103, with no carve-outs or rules of local application.

Our key overall comments on NI 31-103 are set out below. Our comments with respect to specific sections and issues are set out in Schedule A. Our comments with respect to the questions posed by the CSA for which responses were requested and for which we have comments are set out in Schedule B.

Consistent Regulation of all Market Participants

The uncertainty surrounding the meaning of "investment fund" and "investment fund manager", both in NI 31-103 and under existing securities laws, could result in an uneven playing field amongst participants in the capital markets in Canada. Under the Proposed Instrument, alternative investment managers whose portfolios consist of securities will be required to register as an "investment fund manager", but managers of collective investment vehicles which invest in particular asset classes, such as private equity or real estate, may not be subject to the same requirements as the vehicles they manage may not captured by the definition of "investment fund". In addition, the advisers to such vehicles may not be captured by the business trigger for advising. It is also possible that the issuance of securities by such vehicles to their investors may not be caught by the business trigger for dealing. As a result the registration requirements of NI 31-103 will potentially not be applicable to such vehicles or their managers or advisers. The discussion in section 1.4 of the Companion Policy appears to specifically contemplate excluding general partners of venture capital funds formed as limited partnerships from the requirement to register as an adviser.

Excluding from regulation such investment vehicles and other market participants that raise capital from investors or deal and advise in investments, which, based on a technical analysis of securities legislation, are securities, but which have not historically been regulated by securities regulators (regardless of the underlying asset class), places those market participants who are regulated and expend considerable energies in meeting the best practices standards required of them at a considerable disadvantage and does not promote the integrity of the Canadian capital markets.

Based on recent reports[1], private equity vehicles represent capital under management of approximately $65.6 billion and raised over $8.7 billion in 2006. Individual investors in retail and private funds represented 58% of $1.6 billion of new venture capital funds raised in 2006. These amounts in total represent a market which is almost double current estimates of the Canadian alternative investment market. The CVCA represents over 1,200 members, which, we understand, are not all currently registrants.

[1] Private Equity Canada 2006, McKinsey & Company and Thomson Financial. Canada's Venture Capital & Private Equity Association (the "CVCA").

In our view, any market participant that is in the business of collecting and investing the money of investors and making investment decisions on behalf of its investors should be subjected to a no less onerous or rigorous standard of regulation than alternative investment market participants and other currently regulated market participants. If the purpose of NI 31-103, to provide protection to investors from unfair, improper or fraudulent practices, and thereby enhance capital market integrity, is to be satisfied, then all market participants should be regulated in a similar fashion.

Whether an investor invests in a publicly traded company, a hedge fund, a commodity futures contract, a private equity fund or a real estate investment vehicle, the investor should be entitled to similar levels of investor protection under securities legislation.

Size of Capital and Insurance Requirements/Cost of Bond

The capital and insurance requirements for investment fund managers are significantly higher than the corresponding requirements for dealers and advisers. The rationale for the 100% increase in the capital requirement between a dealer and an investment fund manager and the 400% increase in the capital requirement between an adviser and an investment fund manager is unclear to us. We would welcome the opportunity to review and discuss with you any risk analysis studies (particularly those for investment fund managers) which led the CSA to fix the proposed capital requirements.

These capital and insurance requirements could present significant barriers to entry for new funds/managers and could have significant implications for smaller fund managers. Many smaller investment fund managers, although meeting the proficiency requirements of applicable securities laws, struggle to gather assets in the first few years. Imposing barriers to entry which could eliminate these managers would have the effect of reducing the investment choices available to Canadian investors. We believe NI 31-103's goal is best met with proficiency requirements and compliance requirements rather than through the imposition of high capital or insurance requirements.

Rather than the system contemplated in the Proposed Instrument, we would propose a system of graduated capital requirements based on dealer assets or assets under management (**"AUM"**), similar to the graduated insurance requirements in the Proposed Instrument. We believe this would address the stated goals of NI 31-103 and promote innovation and competition through new entrants to the industry. Such a system could start with a minimum of $25,000 of excess working capital for dealers and investment fund managers. The capital requirement would grow to the minimum in the Proposed Instrument of $50,000 for dealers and $100,000 for investment fund managers, based on 0.5% of the dealer's total assets and 0.5% of the AUM of the investment fund manager.

We are also particularly concerned with the timing and method of calculation of excess working capital. Please see our comments on Schedule A.

Requirement for each General Partner of Fund Group to Register

Alternative investment managers often structure their investment funds as limited partnerships with a separate general partner that is an affiliate of the investment adviser for each investment fund. NI 31-103, as currently drafted, could be interpreted to require each general partner to obtain registration as an investment fund manager. This obligation could result in multiple registrations of the same people and place a heavy ongoing cost and compliance burden on alternative investment fund managers who operate their business through a multiple fund structure due to the multiple registrations, insurance requirements, capital requirements and compliance regimes.

The Companion Policy to NI 31-103 does contemplate the current market reality in which many mutual fund trusts and hedge funds delegate all of their management functions to a management company. Nowhere in NI 31-103 is it clarified that such delegation would obviate the need for the trustee or general partner, for example, to register as an investment fund manager so long as the management company is so registered. (In contrast, where advisory or distribution services are delegated, current registration requirements are such that there is no need for any entity other than the delegate who has assumed the responsibility to register as an adviser or dealer, as the case may be.)

We suggest that NI 31-103 be amended to clarify that general partners of investment funds under common management may delegate their management duties to a common manager affiliated or related to the general partner that is registered as an investment fund manager. In such a scenario each general partner would remain ultimately responsible for the manager's activities but would not be registered.

"Know Your Client" and "Suitability" Obligations with respect to Large Market Participants

Large market participants, such as pension funds, financial institutions and government organizations have a significant level of market knowledge, expertise and experience and do not require the benefit of, nor should they be required to utilize, the services (and associated expense) of an exempt market dealer or other dealer who must satisfy the conduct rules in Part 5 of NI 31-103, when making private placement investments. These large market participants conduct a high level of due diligence before making an investment and employ both external and their own "in house" expertise in assessing potential investments. Further, portfolio managers and limited market dealers typically have great difficulty in getting these large market participants to respond to know your client and suitability inquiries.

In our opinion, given the expertise and resources available to these large market participants, dealers, exempt market dealers and portfolio managers involved in the investments made by these large market participants should not be required to satisfy the conduct rules in Part 5 of NI 31-103 intended to provide protection to the investor.

We propose that NI 31-103 be revised to provide that, where a client of an exempt market dealer or portfolio manager is a person described in (a), (b), (c), (f), (g), (h) or (i) of the definition of accredited investor in National Instrument 45-106 - *Prospectus and Registration Exemptions* (**"NI 45-106"**), the trade of the

securities be exempt from the registration requirements of applicable securities laws. Alternatively, if registration is required, the dealer, exempt market dealer and the portfolio manager should not need to comply with sections 5.3, 5.4, 5.5, 5.6 and 5.7 of NI 31-103. We believe the time and cost savings to the dealer, exempt market dealer or portfolio manager, and ultimately to the investor, considerably outweigh the potential investor protection benefit that may be derived by such large market participants.

Off-Shore Exemptions

While we are in favour of registration as a means of providing protection to investors and thereby enhancing capital market integrity, it is appropriate that foreign based capital market participants be permitted to have an acceptable level of access to the Canadian capital market without registration, which will support Canada's competitiveness internationally. It is important to note that Canada represents approximately 3% of the world market. We believe that, with the repeal of the foreign property restrictions under Canadian income tax laws, it is critical that Canadians have reasonable access to the best advisers and managers, wherever they may be located.

The exemption from registration in the Proposed Instrument for international dealers and international portfolio managers is contingent, in part, on the dealer or portfolio manager being registered in the jurisdiction where its head office is located. A number of non-Canadian jurisdictions do not require registration for dealers and/or portfolio managers (e.g. the United States). As a result, a number of international dealers and international portfolio managers may not be able to provide services to Canadian investors without becoming registered in Canada. This may have the effect of lessening the competitiveness of the Canadian capital markets, and the reduction in international dealers and international portfolio managers doing business in Canada will reduce the investment opportunities available to Canadian investors. We suggest that the exemption be amended to include entities that are also exempt from registration in their home jurisdiction.

Similarly, international investment fund managers must engage in the business of a portfolio manager in their home jurisdiction. Those who do not do so may also be prohibited from providing services to Canadian investors without becoming registered in Canada. Again, this will result in a reduction in the number of international investment fund managers operating in Canada, thereby having the effect of lessening the competitiveness of the Canadian capital markets. The absence of these market participants from Canada will reduce the investment opportunities available to Canadian investors. We would encourage the CSA to amend the definition of "international investment fund manager" to remove that qualification or, alternatively, to require only that the fund manager engage in the business of *investment fund management* in its home jurisdiction.

Registration of Managers of Feeder Funds

Investments in alternative investment vehicles which are structured as off-shore funds are frequently structured to be made through an investment fund governed by the laws of a Canadian jurisdiction (a **"feeder fund"**), whose sole investment objective is to invest in the off-shore fund. The operations of a feeder fund,

although minimal, are customarily managed by a manager, usually related to the off-shore fund or its advisors. Often the feeder fund is created to accommodate one or a few Canadian investors. The requirement that the manager register as an investment fund manager may motivate the off-shore fund to avoid creating the feeder fund and thereby effectively prohibit Canadian investments. We suggest that an exemption from registration for the investment fund manager be provided in such situations where the investors have made their investment under an exemption in NI 45-106, the offshore fund is managed by an affiliate of the Canadian manager and the foreign manager or adviser is regulated in its home jurisdiction.

Transition

NI 31-103 does not currently contain any transition provisions. We believe that any transition provisions in the Proposed Instrument must provide ample time for:

1. currently registered firms, who would otherwise meet all of the requirements of NI 31-103, to review and revise existing documentation, prepare the additional documentation and implement any additional procedures necessary to make themselves compliant with NI 31-103;

2. currently registered firms, who currently do not meet all of the fit and proper requirements of NI 31-103 (particularly proficiency), to take all necessary steps to meet such requirements, review and revise existing documentation, prepare additional documentation and implement any additional procedures necessary to make themselves compliant with NI 31-103;

3. firms not currently registered, because their activities are not currently registerable, but that will have to register under NI 31-103 and that currently meet all of the requirements of NI 31-103, to become registered and prepare documentation and implement procedures necessary to make themselves compliant with NI 31-103.

4. firms not currently registered, because their activities are not currently registerable, but that will have to register under NI 31-103 and that do not currently meet the fit and proper requirements (particularly proficiency), to take all necessary steps to meet the fit and proper requirements, become registered and prepare documentation and implement procedures necessary to make themselves compliant with NI 31-103.

The transition provisions must also address the status of any exemptive relief, granted under the current regulatory regime, following the adoption of the Proposed Instrument.

We would propose the following transition periods for current registrants (and those currently in business but not currently required to register) after NI 31-103 has been enacted:

a) 2 years for proficiency requirements;

b) 1 year for any increased capital and insurance requirements; and

c) 1 year for fit and proper requirements (other than proficiency).

Anticipated Costs and Benefits

We would appreciate the opportunity to review the detailed cost and benefit analysis undertaken in support of the initiatives in NI 31-103, and in particular, any statistical information or surveys that support the Proposed Instrument. In our view, NI 31-103 will impose a significant level of cost on registrants.

Conclusion

AIMA fully supports the efforts of the CSA and the policy goals of NI 31-103. We believe, however, the changes described above are required to NI 31-103 in order to effectively achieve its policy goals in a manner which balances policy concerns with business realities and creates a level playing field for all capital market participants.

We appreciate the opportunity to provide the CSA with our views on NI 31-103. Please do not hesitate to contact the members of the AIMA working group set out below with any comments or questions you might have. We would appreciate the opportunity to meet with you in order to discuss our comments.

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Yours truly,

ALTERNATIVE INVESTMENT MANAGEMENT ASSOCIATION

By: Phil Schmitt

Phil Schmitt, Chair, AIMA Canada

SCHEDULE A

COMMENTS RE SPECIFIC SECTIONS & ITEMS

1. *Adviser categories (Section 2.3)* – We would encourage the CSA to add "or to advising specified clients, or a combination of such restrictions" to the end of clause (b). We are of the view that this would add some flexibility to grant the restricted registration in circumstances where they are warranted by specific facts.

2. *Individual categories (Section 2.6)* – This section specifies the various categories for individual registrations, but it is unclear how these categories relate to Schedule C of the draft Form 33-109F4. We would appreciate clarification or a revision to Schedule C.

3. *Capital requirement (Section 4.14 (3))* – This section requires that Form 33-103F1 calculating excess working capital must be completed within 20 days of month-end. This requirement should be clarified to be 20 business days, which is consistent with the IDA requirement for the filing of the Monthly Financial Report or MFR, and so would ensure consistent treatment of all registrants. We also note that it is potentially very difficult for an investment fund manager to make the calculation, which is based on revenues, if financial statements for the funds managed by the investment fund manager are not finalized under NI 81-106 within the first 3 weeks after a quarter-end, given that the fund manager has 45 days to publish the fund results and the Management Report of Fund Performance (see also our comment below re the filing of quarterly financial statements).

4. *Form 33-103F1 Calculation of Excess Working Capital* - Line 9 of the calculation requires a deduction for the market risk of securities owned by the firm, in accordance with IDA margin rules. As the Proposed Instrument is currently drafted, an investment fund manager that invests in funds not offered under a prospectus (e.g. hedge funds) would face a 100% deduction in respect of such securities. We believe that this is unfairly punitive and runs counter to industry and competitive pressures that exist today. In the alternative investment industry it is a competitive reality that investors, particularly institutional investors, expect a fund manager to have invested a significant portion of its resources (as well as the personal wealth of its owners) in any fund(s) that it manages as it aligns the interests of the fund manager with the investors in the fund. The calculation as drafted would penalize such activity by the registrant firm, whereas a direct investment in the underlying securities held by the fund potentially results in a lesser deduction. The choice of vehicle for investing should not impact the end result of the calculation. We believe that the CSA regulations should not act to skew market-driven activity in a specific direction. Investments in funds align the interests of the manager with the investor, enhancing investor protection. A fund manager may also invest cash that is excess to current liquidity needs in its funds, then withdraw it as needed. The Proposed Instrument would penalize such activity.

We suggest that where a registrant has invested in a fund it manages on a direct basis, and therefore has clear day-to-day knowledge of the fund and performance, the deduction required by Line 9 for market risk should be based on the underlying instruments in which the fund invests. This would be appropriate when there are no liquidity restrictions longer than a set period, for example 30 days, in order to meet the intent of the working capital requirement. Investments in funds with a lockup or redemption period in excess of 30 days would not qualify for this treatment.

5. *Direction to Auditor (Section 4.21)* – While we recognize that this provision is a restatement of current law, we are concerned that this provision could open a registrant to potentially unlimited billings for work requested by another party. We propose that the section be amended to provide controls to manage any such costs that may be incurred.

6. Delivering annual financial information (Sections 4.22, 4.23, 4.24)

    a) These sections mandate an annual filing of audited unconsolidated financial statements. It is our view that the cost to obtain an additional audit opinion on the unconsolidated financial statements is not justified when audited consolidated financial statements exist. We suggest the requirement be changed to allow the filing of unaudited unconsolidated financial statements together with audited consolidated financial statements. We would appreciate confirmation that all such filings of financial information will remain confidential.

    b) These sections also require the annual filing of the details of any net asset value adjustments made during the year. This should be changed to be only for the fourth quarter, since the quarterly filings (see below) require the filing of this information for the first three quarters, and therefore the annual requirement as drafted is repetitive. We would appreciate confirmation that any such filings will remain confidential.

7. Delivering quarterly financial information (Sections 4.22, 4.23, 4.24)

    a) These sections require the filing of registrant financial statements within 30 days of the end of the first, second and third fiscal quarters. In our opinion this should be changed to 45 days to ensure consistent treatment with other market participants. Reporting issuers (public companies and investment funds) have 45 days to make comparable filings under the provisions of National Instrument 51-102 – *Continuous Disclosure Obligations* and National Instrument 81-106 – *Investment Fund Continuous Disclosure*. As noted previously, we would also point out that it is potentially very difficult for an investment fund manager to finalize its revenues in time to allow the preparation of corporate financial statements when the finalization of fund values may not be complete in accordance with NI 81-106 timelines. AIMA has previously made a submission (ref. letter March 22, 2007 to Ms. Leslie Byberg at the OSC) indicating some of the challenges in meeting such deadlines, particularly for funds of funds.

b) The comments in #6 above with respect to the confidentiality of unconsolidated financial statements and net asset value adjustments apply with respect to these quarterly filings as well.

8. *Leverage disclosure (Section 5.6 (2))* – This section indicates that the leverage disclosure is not required if the client is an accredited investor. NI 45-106 allows sales under the private placement exemptions to both accredited investors and to individuals who invest in excess of $150,000. We recommend that section 5.6(2) be amended to exempt from this requirement any client who has purchased under the private placement exemptions of NI 45-106.

9. *Relationship Disclosure: Application (Section 5.8(2))* – Similar to #8 above we recommend that this section be amended to state that the section does not apply to any client who has purchased under the private placement exemptions of NI 45-106.

10. *Content of relationship disclosure document (Section 5.12)* – In our view, the specified content is overly prescriptive, duplicative of other information already provided to clients and would create an unnecessarily greater reporting burden on registrants. While we acknowledge that the overall relationship and relative responsibilities should be clearly understood by both parties we believe that the details of such disclosure are best determined by the market. For example, clients already receive a copy of the Statement of Policies, Fairness Policy (as required separately by section 6.6 of NI 31-103), prospectuses or offering memoranda, IRC reports mandated under National Instrument 81-107 – *Independent Review Committee for Investment Funds*, as well as the disclosures and reports proposed to be required under National Instrument 23-102 – *Use of Client Brokerage Commissions as Payment for Order Execution Services or research ("Soft Dollar Arrangements")* and Joint Framework 81-406 - *Point of Sale Disclosure for Mutual Funds and Segregated Funds*. It is important to remember that all of these requirements effectively impose costs on clients in terms of reading and understanding such a volume of material. We respectfully request that any required disclosures be reviewed on an integrated basis in the context of all the information provided to clients. We would appreciate the opportunity to discuss this with you.

    In our view it is also unduly burdensome to require that all such documents effectively be tailored by the inclusion of know your client information.

11. *Securities, cash and other property (Section 5.13(2))* – The requirement to hold cash with a Canadian financial institution does not reflect the realities of prime brokerage arrangements engaged in by our members. If an investment fund manager utilizes an offshore prime broker, which is often the case when the investments involved are not Canadian, then the offshore prime broker will hold the cash, as well as the securities, particularly the cash arising from short sales. This arrangement provides the fund with security and margin for positions. As a result, in many cases it will not be possible or reasonable to segregate a fund's cash at a Canadian institution separate from the custodian of its securities. It is important to note that the majority of firms

involved in such prime brokerage activity are major international companies that are regulated in their home jurisdictions.

12. *Records – form, accessibility and retention (Section 5.20)* – We would appreciate clarification on what is meant by "provided promptly to the regulator" (e.g. 2 hours or 1 day?). On site storage costs in particular can be high and such costs will likely be passed on to investors. We are also concerned about the attempt to categorize records between "activity" and "relationship". Often such a distinction is not clear and may overlap, thereby creating significant costs as registrants err on the side of caution and attempt to segregate records by differing retention periods. The relationship record requirements in essence mean permanent retention of all records in respect of long term clients. This potentially creates significant costs and accessibility issues as technology evolves. We suggest that the CSA focus on any specific areas of concern, taking into account other statutory requirements that are part of general corporate and tax law.

13. *Dispute resolution service (Section 5.30)* – In our opinion it is unreasonable and creates an additional cost burden to mandate participation in a dispute resolution service, particularly if the assumption of the requirement is that such participation is ongoing and requires payment of ongoing fees. We would appreciate obtaining from the CSA the details of any work done on the availability and costs of such services. Investors already have access to various avenues, both through the firm and with the CSA members, to address complaints. A potential alternative is to mandate that contracts require that complaints be settled through such services, if and as necessary, so that costs are incurred only when necessary, and presumably in unusual circumstances.

14. *Complaints – Reporting to the regulator (Section 5.32)* – Similar to previous comments with respect to NAV adjustments, we would appreciate confirmation that any filings of complaint data will remain confidential.

15. *Disclosing referral arrangements to clients (Section 6.13)* – We are supportive of the requirement to ensure that all potential conflicts are disclosed to clients. In our view however the requirement in subsection (d) to disclose the amount of the fee is not appropriate. This is confidential information between the referring parties. The fact that a fee may be payable should be sufficient information to alert an investor that a possible conflict exists, the importance of which the investor can assess, either directly or by asking for additional information. The disclosures outlined in subsections (c) and (g) are too open ended and subject to interpretation after the fact and should be removed. We also believe that the required disclosures in subsections (e) and (f) are not meaningful to an investor and should not be required.

16. *Firms' obligation to share information (Section 8.1)* – We are concerned that the requirement in this section is too broad, open-ended and subject to hindsight. There is the potential that firms providing information could be subject to lawsuits for libel, for example. In addition, we believe that there are possible violations of privacy law in the provision of information about an individual,

particularly employment information, when the individual may not be aware of such sharing and has not granted permission. If the provisions are to be retained there should be "safe harbour" granted and exemptions from privacy legislation for information provided in good faith.

17. *International portfolio manager (Section 9.14(2))* – Given that international portfolio managers are not permitted to solicit new clients, the disclosure required to be provided under this section will only be provided to existing clients with whom the international portfolio manager has an ongoing relationship. Given that it is likely that the international portfolio manager will already have provided this information to its Canadian clients, we believe the potential for disruption of the existing client relationship outweighs the investor protection benefit of the disclosure and recommend that it be removed from NI 31-103. In the event that it is not removed, guidance on exactly when and to whom the disclosure must be made (all Canadian clients or just those clients acquired after NI 31-103 comes into force or just those Canadian clients who have not already received the disclosure) would be helpful.

18. *Privately placed funds offered primarily abroad (Section 9.15)* – As with #17 above, exactly when and to whom the disclosure must be made (all Canadian clients or just those clients acquired after NI 31-103 comes into force or just those Canadian clients who have not already received the disclosure) would be helpful.

19. *Exempt market dealer (Section 4.7)* – We believe that "or," should be inserted at the end of section 4.7(a)(ii)(B).

20. *Portfolio manager – chief compliance officer (Section 4.11)* – We believe that "or," should be inserted at the end of section 4.11(a).

21. *Custody of assets (Section 5.35)* – We believe that "or," should be inserted at the end of section 5.35(a).

SCHEDULE B

QUESTIONS FROM NOTICE AND REQUEST FOR COMMENT

Question #1: What issues or concerns, if any, would your firm have with the proposed fit and proper and conduct requirements for exempt market dealers? Please explain and provide examples where appropriate.

We generally support appropriate proficiency requirements for all registered market participants.

Question #2: The British Columbia Securities Commission seeks comments on the relative costs and benefits in British Columbia of harmonizing with the other CSA jurisdictions to create an exempt market dealer category and in doing so, eliminating the registration exemptions for capital-raising transactions and the sale of those securities, referred to in some jurisdictions as "safe securities" (i.e. government guaranteed debt).

In our view, it is essential for market efficiency that there be consistency of regulation across Canada, as encouraged by the passport initiative. We recommend that all the provinces and territories enact all agreed upon sections of the Proposed Instrument without local exceptions, so that there is a level playing field and consistency of regulation across all Canadian jurisdictions.

Question #3: Registration for managers of all types of investment funds (other than private investment clubs) is proposed. Are there managers of funds for which the risks identified are adequately addressed in some other way and therefore registration as a fund manager may not be necessary? If so, please describe the situation.

As outlined in our letter, we strongly encourage the CSA to ensure that all managers of investment funds in Canada be required to register in order to maintain a level competitive playing field.

Question #4: Registration of the UDP and CCO is proposed. As well, we propose that the UDP be the senior officer in charge of the activity carried on by a firm that requires the firm to register. What issues or concerns, if any, would your firm have with these registration requirements? Do you think the registration of the UDP and CCO contributes to or detracts from a firm wide culture of compliance? Please explain.

No comment.

Question #5: The Proposed Instrument proposes an associate advising representative category for portfolio managers but not for restricted portfolio managers because the restricted portfolio manager category is intended for individuals who have expertise in a specific industry. Is the concept of an associate advising representative useful in the context of a restricted portfolio manager? If so, why?

We believe that associate advising representatives should be allowed for restricted portfolio managers as well in order to allow individuals to join firms in order to "learn the business". For example, it is not uncommon for geophysicists or engineers to join investment firms to bring their expertise about an

industry. As an associated advising representative they could employ such expertise while learning the investment business and earning a designation.

Question #6: We discussed but have not proposed registration of senior executives and directors (i.e. the mind and management) of a firm. Registration would assist the regulators in being able to deal directly with this group of people rather than indirectly through the firm. Please provide us with comments on what positions in a firm should be considered part of the mind and management and what issues or concerns you or your firm would have with registration of individuals in those positions.

We believe that it would be appropriate to register the mind and management of a firm. In our view this should constitute the directors and the senior officers who, meeting as a group, generally set overall policy and strategic direction for the firm.

Question #7: The proposed exemption applies to advisers who are actively advising and managing their clients' fully-managed accounts. The exemption has not been extended to advisers dealing in securities of their own pooled funds with third parties. If there are circumstances in which you think it would be appropriate to extend the exemption to third parties please describe.

In our view, the requirement for a fund adviser, that is principally responsible for distribution of the fund's securities to third parties, to also register as an exempt market dealer is duplicative and adds unnecessary regulatory cost to the registrant. We recommend that so long as the registered adviser is prepared to discharge know-your-client and suitability obligations to third party investors who do not otherwise purchase exempt securities through a registered dealer, the aims of the Proposed Instrument can be achieved without layering another, lesser, category of registration onto a registered portfolio manager.

Question #8: The Rule requires dealers, advisers and fund managers to have Financial Institution Bonds. In cases where the owners of the firm also carry out the operations and registerable activity of the firm, usually in small firms, are these bonds prohibitively costly to obtain and will the bonds provide coverage if they are obtained in these situations?

No comment.

Question #9: We propose that some requirements of Division 1 not apply to clients that are accredited investors as defined in NI 45-106 Prospectus and Registration Exemptions. Is it appropriate to exclude this group, or any other group, of clients from the account opening requirements?

As noted in our Comment #8 on Schedule A, we believe that all references to exemptions for accredited investors in the proposal should be replaced with a reference to any clients purchasing under the private placement exemptions of NI 45-106. This would ensure consistency of treatment for individuals who are deemed to be similar with respect to such investments.

Question #10: What issues or concerns, if any, would your firm have with the proposed relationship disclosure requirements? Is this type of requirement appropriate for some or all types of accredited investors? If so, what information would be useful to have in the relationship disclosure document?

Please see our comment #10 on Schedule A. We believe that the requirements are overly prescriptive, duplicative of other information already provided to clients and would create an unnecessarily greater reporting burden on registrants. In our opinion an overall review of all proposed reporting to clients should be done with a view to rationalizing the requirements. We would be happy to meet with CSA representatives to participate in such an exercise.

Question #11: Is the prescribed content for a confirmation the appropriate type of information?

No comment.

Question #12: The Rule requires a registered firm to identify and deal with all conflicts. Would a materiality concept be appropriate within the requirement or should that be dealt with at the firm level within the firm's policies?

In our view, NI 31-103 should include a materiality concept to ensure a reasonable level of activity in the identification of potential conflicts.

Question #13: Is our description of the risks of referral arrangements complete and accurate? If not, what is missing?

No comment.

Question #14: One objective of NI 45-106 was to have all exemptions in one instrument. As mentioned, we have included the registration exemptions in the Rule for purposes of obtaining comments on the exemptions that are being proposed under a business trigger. Would you prefer the registration exemptions remain in NI 45-106 or be moved into the Rule?

No comment.

Question #15: Is 120 days sufficient to allow registrants with existing referral arrangements to comply with the Rule? If not, what length of time is sufficient? Please explain.

Please see our comments in the letter re transition periods.

Question #16: A matter not dealt with in the Rule but one which relates to registrants and NRD is the annual fee payment date. Comments have been made by some industry participants that a December 31 fee payment date is problematic and that a May 31 fee payment date would be better. Please comment on whether a May 31 or December 31 annual fee payment date is better for your firm.

We support a May 31 fee payment date in respect of the preceding year end.

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