August 24, 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, 22 étage
Montreal, Québec
H4Z 1G3

Dear Sirs/Mesdames:

Re: AIMA Canada's comments on proposed amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure*

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 amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure* (the **"Proposed Amendments"**).

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 generally support the Proposed Amendments as we feel that they address a number of the concerns that alternative investment industry participants have had with NI 81-106, and in particular the effect that section 3855 *Financial Instruments – Recognition and Measurement* of the CICA Handbook has had on certain of the requirements in that Instrument.

We do however have concerns with certain specific amendments and would like to have seen certain additional amendments to reflect the issues the industry has faced with the current Instrument.

Look-through

One of the Proposed Amendments to NI 81-106 is the "look-through" provision as described in subsection 3.5(8.1) of the instrument, which requires an investment fund (the 'top' fund) to disclose the holdings of an underlying fund when the top fund invests substantially all of its assets directly or indirectly in such underlying fund. Generally we are supportive of additional disclosures to assist security holders in identifying risks associated with a fund. However, we would like to raise two specific concerns with respect to this Proposed Amendment and its effects on non-reporting issuers who invest in the manner described.

Our first concern surrounds the accessibility of information at the individual security level. Alternative investment managers utilize a wide variety of vehicles and structures which often include direct or indirect investments substantially in one underlying fund. There are a variety of instances where such structures do not have full transparency to the investments of the underlying fund on a security by security basis. It is quite typical for the fund manager to receive the net asset value of the underlying fund at each valuation date (e.g. weekly or monthly) with summary level information on portfolio movements and positions in the period, whether provided in prose or numeric form. In addition, underlying fund financial statements are also generally received annually, however United States and International generally accepted accounting principles ("GAAP"), which are the standards most typically used in the hedge fund industry, do not require detailed security level disclosures (U.S. standards currently require specific disclosure only for individual issuer exposures over 5% of net assets).

Additionally, even if security level information is available, there may be contractual limitations in the offering documents of underlying funds that restrict the disclosure of position-level security information. This situation may occur for fund products domiciled in jurisdictions outside Canada where structuring or other business requirements may impact such access.

Our second concern relates to the ability to have this additional disclosure audited, since, as required by the Proposed Amendment, the security position information would be included in the financial statements of the top fund. This concern is most significant in circumstances where the underlying fund is audited by auditors other than those of the top fund. In such instances the top fund's auditors will not have access to the books and records of the underlying fund. As a result, they will have to consider the extent of information provided in the audited financial statements of the underlying fund together with timing of availability of such information in order to assess whether they have sufficient information with which to be comfortable with the intended security-level disclosures.

A further complicating factor occurs when the underlying fund does not have a coterminous year end with that of the top fund. This will have an impact on all fund structures regardless of whether the underlying fund has the same or different auditors in terms of additional requirements to perform audit procedures over such disclosures.

Where the auditor determines that they do not have sufficient audit evidence on security level positions, additional procedures may be required in order to provide the appropriate level of comfort, which could include asking for specified procedures to be undertaken by the underlying fund's auditors. Any additional procedures will involve an increase in resources and hence the costs of completion of the audit.

As a result of the above observations we believe that the Proposed Amendment related to the "look-through" requirement will be difficult to comply with for many of our members who manage non-reporting issuer funds. We therefore believe that this requirement should be removed from the amendments proposed. However we would note that disclosure requirements for financial instruments under Canadian generally accepted accounting principles are increasing with the implementation of CICA Handbook Section 3862, *Financial Instruments – Disclosures*. Section 3862 will require a more detailed presentation of the nature and extent of risks arising from financial instruments (including risks associated with underlying investments), under paragraph 31, for fiscal years commencing on or after October 1, 2007, which should provide relevant information to address the concerns of the Canadian Securities Administrators.

Fair Value and Materiality

Section 3.6(1) #5 requires disclosure in the notes to the financial statements of a reconciliation between the net asset value per the financial statements to the net asset value used for transactional purposes, as at the date of the financial statements. Any difference between the two amounts is expected to arise largely because of the use of bid and ask prices for portfolio valuation in the financial statements versus fair value for transactional purposes. It is our understanding that the current expectation of the CSA is that bid/ask will be used in all cases for financial statement purposes with a reconciliation provided.

We would recommend that the Proposed Amendment be revised to require a reconciliation between the accounting net asset value and transactional net asset value only where this difference is material together with a note to explain that such difference, if not disclosed, is not material. Such a statement is consistent with the application of Canadian GAAP to the financial statements.

Filing Exemption for Mutual Funds that are Non-Reporting Issuers

We would also like to provide commentary on the 90 day deadline in section 2.2 for non-reporting issuers to provide financial statements to their investors, specifically in relation to fund of fund structures. AIMA Canada previously commented on this issue in a letter to Ms. Leslie Byberg of the Ontario Securities Commission on March 22, 2007.

Many of these structures invest in underlying funds that are domiciled in jurisdictions where the regulatory filing requirements are in excess of 90 days (such as the Cayman Islands, which has a 180 day filing requirement). This may create challenges for a Canadian non-reporting issuer fund to prepare financial statements which meet the 90 day requirement.

As a comparison to other jurisdictional filing considerations, it is notable that the SEC provides an additional 60 days for funds of funds to distribute financial statements over that required for other hedge fund structures, extending the time requirement to 180 days. This is relevant to a registered investment adviser of a hedge fund who is deemed to have custody of client assets. In order for them to be exempt from the security count requirement of the Investment Advisers Act of 1940 ("the Advisers Act"), it requires that the audited financial statements be distributed to the fund's investors within 120 days after the fund's year-end (180 days in the case of a funds-of-funds) (Custody of Funds or Securities of Clients by Investment Advisers, (November 5, 2003), http://www.sec.gov/rules/final/ia-2176.htm.). We believe that this additional extension to 180 days has significant merit for non-reporting issuer funds of funds and should also be adopted in Canada.

We appreciate the opportunity to provide the CSA with our views on the Proposed Amendment. 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, Chair, AIMA Canada