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BORDEN LADNER GERVAIS

September 5, 2007

Via Email

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

Delivered to:

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Dear Sirs/Mesdames

Re: Proposed Amendments to National Instrument 81-106 Investment Fund Continuous Disclosure, Form 81-106 F1 and Companion Policy 81-106 CP and Related Amendments Published for Comment on June 1, 2007

We are pleased to provide the members of the Canadian securities administrators ("CSA") with comments on the above-noted proposed amendments (the "Proposed Amendments").

These comments are those of lawyers in BLG's Investment Management practice group and do not necessarily represent the views of the firm or our clients, although we have incorporated feedback received to date from our clients into this letter. Our comments follow the general format of the Proposed Amendments and also include a number of additional comments relating to NI 81-106 not specifically addressed as part of the Proposed Amendments.

1. Support for the CSA's Approach

We are supportive of the Proposed Amendments as they address the central issues and concerns raised by the investment management industry as a result of the introduction of section 3855 *Financial Instruments – Recognition and Measurement* of the Canadian Institute of Chartered Accountants ("CICA") handbook.

Section 3855 amends Canadian generally accepted accounting principles ("Canadian GAAP") to provide more specific guidance on how to measure financial instruments at fair value for financial statement purposes when fair value measurement is required. As a result of section 3855 and its interaction with NI 81-106, which requires the calculation of the net asset value ("NAV") of an investment fund in accordance with Canadian GAAP, investment funds would need to value a large portion of the securities in their portfolios at bid or ask price on each valuation day instead of close price. Without the Proposed Amendments (and interim decision of the CSA dated September 29, 2006, which we understand will be extended), a fundamental change in the commercial bargain (pricing at NAV) between the fund and its investors would have occurred as a result of an event beyond the control of the investment fund industry and without its prior input. The CSA's timely assessment of the potential impact of section 3855 and proposed approach to mitigate adverse consequences is welcomed.

2. Subsection 3.5 (8.1) "Look Through" Provision

We are concerned with the 'look through' provision contained in subsection 3.5 (8.1) of NI 81-106 and its potential impact on investment funds that are non-reporting issuers that use fund on fund structures to achieve their investment objectives. This provision may have a particularly negative impact on participants in the alternative investment management industry. We believe that the look through provision should be removed from the Proposed Amendments.

As currently proposed, subsection 3.5 (8.1) will require an investment fund (a "top fund") that invests substantially all of its assets directly, or indirectly through the use of derivatives, in securities of another investment fund (an "underlying fund"), to disclose the holdings of the underlying fund. The disclosure can be made in either the statement of investment portfolio or the notes to that statement.

We believe that for many fund managers in the alternative asset management industry who utilize fund on fund structures, the look through provision and its consequent disclosure requirements will be unworkable. Where a top fund that is not a reporting issuer invests in an underlying fund that is at arm's length to the top fund and that is domiciled in a jurisdiction that is not subject to NI 81-106 (for example British Columbia or an offshore jurisdiction), and where the top fund does not have access or transparency to the investments of the underlying fund on a security by security basis (whether because of contractual limitations or where there is no requirement in the underlying fund's local jurisdiction to provide individual issuer disclosure below certain levels), these top fund managers will be unable to disclose the holdings of the underlying fund.

Certain fund on fund arrangements permit accredited investors to gain exposure to underlying fund managers that would normally be unable to be accessed because of the high minimum subscription amounts that are required in the underlying funds. Since a top fund may be only one of many investors in an underlying fund and because an underlying fund may be under no obligation to its investors to provide the level of detailed disclosure that subsection 3.5 (8.1) will require, the adoption of the look through provision will force Canadian top fund managers to either terminate their top funds or relocate them to a jurisdiction such as British Columbia where NI 81-106 does not apply to a mutual fund that is not a reporting issuer, or to an offshore jurisdiction.

Even where the regulatory regime in an underlying fund's local jurisdiction requires the underlying fund to provide disclosure of its holdings on a security by security basis, compliance with the look through provision may not be possible because the reporting timelines for both top and underlying funds are not aligned.

There may be further complicating factors to the look through provision. For example subsection 3.5 (8.1) will require audit work to be performed on the underlying fund disclosure which will, in turn, require the sharing of information or access to the books and records of the underlying fund. If both top fund and underlying fund have either different year ends or different auditors, performance of this audit work in order for the top fund to meet its obligations under NI 81-106 will be difficult if not impossible.

While the look through provision may be able to be refined to apply only where the managers of top and underlying funds are not at arm's length or where the underlying fund is required to prepare and disclose its individual holdings and the top fund can access this information in a timely manner, we expect that there will be other operational obstacles. For all of the above reasons we believe that subsection 3.5 (8.1) in its current form should be removed from the Proposed Amendments.

3. Reconciliation of Net Assets to Net Asset Value

Subsection 3.6(1)5 of NI 81-106 requires disclosure in the notes to the financial statements of an investment fund of a reconciliation of the net assets and net assets per security in the financial statements to the net asset value and net asset value per security, as at the date of the financial statements, together with an explanation of the differences between these amounts.

The reconciliation will reflect the difference between valuation for financial statement purposes and valuation for all other purposes. For investments that are traded in an active market where quoted prices are readily and regularly available section 3855 requires bid prices (for investments held) and ask prices (for investments to be acquired) to be used in the fair valuation of investments, rather than the use of closing market prices currently used for the purposes of determining transactional NAV. We recommend that the Proposed Amendments be revised to require reconciliation only where the difference is material. This treatment would be consistent with the application of Canadian GAAP to financial statements.

4. Deadline for Filing Annual Financial Statements

Section 2.2 of NI 81-106 requires that annual financial statements and auditors report must be filed on or before the 90th day after the investment fund's most recently completed financial year. For non-reporting fund on fund structures this requirement can be most problematic. Where underlying funds in a fund on fund structure are situate in jurisdictions where the filing requirements are more than 90 days it is often difficult for the top fund in the structure to meet the 90 day filing requirement. We therefore suggest that an extension be made for non-reporting fund on fund structures. We understand from participants in this market that an extension to 180 days would be more realistic.

5. SEDAR Filing of Management Reports of Fund Performance ("MRFP") and Financial Statements

CSA Staff Notice 81-315-Frequently Asked Questions on NI 81-106 Investment Fund Continuous Disclosure dated November 25, 2005 (the "FAQ") states that each MRFP should be filed on SEDAR under the individual investment fund to which it pertains (and not under a group profile). We are aware of certain fund managers with portfolio solutions that utilize fund on fund structures whereby an investor purchasing securities of a top fund will gain exposure to several underlying funds also managed by the same manager. Such investors will receive financial statements and MRFPs of both top and relevant underlying funds as part of the continuous disclosure cycle.

An investor or prospective investor may also access SEDAR to obtain information on both top and underlying funds. It would be more useful for that investor or prospective investor to be able to access all of the underlying funds relevant to the top fund then having to do multiple SEDAR searches in order to obtain information on each underlying fund that is relevant to a top fund. To achieve this result we submit that fund managers should be able to file combined MRFPs under an individual investment fund.

6. Breakdown of Management Fees

The FAQ contains helpful guidance on NI 81-106 and, in particular, on Item 3 – Management Fees of Form 81-106F1 (C-8 to C-10). We encourage the CSA to incorporate this information into NI 81-106 or into Companion Policy 81-106 CP as this will ensure consistency in the presentation of the breakdown of management fees going forward.

7. Calculation of Trading Expense Ratio

For fund on fund structures generally the calculation of management expense ratios and particularly trading expense ratios pose challenges to fund managers. While we understand that this is not a novel issue we feel that the CSA should provide further guidance so that in those instances where underlying fund information is not readily available a more general approach can be taken to calculation methodology.

We thank you for allowing us the opportunity to comment on the Proposed Amendments. Please contact the following lawyers in our Toronto and Vancouver offices if the CSA members would like further elaboration of our comments. We would be pleased to meet with you at your convenience.

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