April 10, 2008

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
Prince Edward Island Securities Office
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Registrar of Securities, Government of Yukon

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
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
Montréal, Québec
H4Z 1G3

Dear Sirs/Mesdames:

Re: AIMA Canada's Comments on Proposed National Instrument 23-102 *Use of Client Brokerage Commissions as Payment for Order Execution Services or Research Services* and Companion Policy 23-102CP

This letter is being written on behalf of the Canadian chapter of the Alternative Investment Management Association ("AIMA Canada") and its Members to provide our comments to you on proposed National Instrument No. 23-102 *Use of Client Brokerage Commissions as Payment for Order Execution Services or Research Services* ("NI 23-102") and its Companion Policy.

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 educational and research body that specifically represents practitioners in hedge fund, futures fund and currency fund management – whether managing money, providing a service such as prime brokerage, administration, legal or accounting. AIMA's global membership comprises over 1,300 corporate members, throughout 49 countries, including many of the leading investment managers, professional advisers and institutional investors. AIMA's Canadian chapter, established in 2003, now has over 80 corporate members.

One of the objectives of AIMA is to ensure the representation and integration of skill-based investments into mainstream investment management. AIMA works closely with regulators and interested parties in order to better promote and control the use of alternative investments.

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.

Organization

This letter outlines our general thoughts and major points with respect to NI 23-102. Our comments with respect to the specific questions posed by the CSA for which responses were requested are outlined on Attachment A.

General Comments

AIMA Canada would like to commend the CSA for publishing materially revised versions of the original proposals. In particular, AIMA Canada and its members note that many of the proposed changes contained in AIMA Canada's comment letter dated October 19, 2006, as well as changes proposed by the numerous other commenters, have been incorporated into the updated versions of NI 23-102. Of particular importance are:

1. the efforts to harmonize the new regime with other jurisdictions (particularly the United States);
2. the inclusion of databases and software in the definition of "research services";
3. the narrowing of application to trades where brokerage commissions are charged by a dealer; and
4. changes to the mandated disclosure.

Notwithstanding the above, AIMA Canada believes that the disclosure obligations outlined in the instrument require further change or would benefit from further clarification by the CSA.

Disclosure Obligations

AIMA Canada agrees that adequate disclosure to investors and clients of an adviser's use of commissions is important to ensure that such amounts are used effectively for the benefit of the client and in accordance with the adviser's fiduciary duty to act fairly, honestly and in good faith. While this objective is not in dispute, our view is that such disclosure must be consistent with other disclosure requirements, meaningful, easily understood by the investor and capable of being provided by the adviser in a cost effective manner.

In addition, as we commented in our letter of October 19, 2006, AIMA Canada believes that another important objective is that such disclosure be balanced against the maintenance of each firm's proprietary competitive advantage.

In AIMA Canada's opinion meeting these objectives requires changes and/or clarifications to sections 4.1(c), 4.1(f) and 4.1(g) of NI 23-102, as well as the supporting comments in the Companion Policy.

Section 4.1(c)

With respect to section 4.1(c), we continue to believe that the disclosure of the suppliers of goods and services and the nature of what was received requires a firm to disclose proprietary competitive information. The vetting and development of supplier relationships can be a large part of an adviser's competitive advantage Notwithstanding the fact that for the majority of our members who manage private pooled funds such information would only be going to the clients, we submit that the probability of such information becoming public is relatively high.

As such we submit that the disclosure contemplated by section 4.1(c) should not be required disclosure, but rather should be available upon request by the client. This does not diminish in any way the adviser's responsibility to meet its fiduciary obligations and to maintain adequate books and records, but would maintain the privacy of the information. It also meets the objective of meaningful disclosure to the client since they will receive it upon request, i.e. when they consider it to be important. This disclosure distinction should be acceptable, when compared to mutual funds subject to the disclosure requirements in the Annual Information Form under Form 81-101F2, as these private pooled funds are sold to accredited investors under the private placement exemptions and not to the general public. We submit that there are legitimate policy reasons for making a distinction between a privately sold fund and a retail fund, including the relative sophistication of the investor in the privately sold fund who is capable of determining themselves what information is important or relevant.

Section 4.1(f)

With respect to section 4.1(f), the requirement to disclose the total client brokerage commissions paid by the client during the period, the definition of what constitutes a client is critical. We support the clarification in section 5.1 of the Companion Policy that the client would generally be considered to be the party with whom the contractual agreement to provide advisory services exists. The comment goes on to state that in the case of an adviser to an investment fund the fund would generally be considered as the client, unless the adviser is also the trustee and/or manager, in which case disclosure to the Independent Review Committee ("IRC") should be considered.

One possible interpretation of the comments in this section is that for pooled funds where the adviser is the manager/trustee and an IRC does not exist (due to the fund being private), disclosure at the unitholder level could be required. In our view such disclosure would not be meaningful and would be burdensome to calculate, requiring the daily tracking of a unitholder investment as a percentage of the total fund. We believe that such an interpretation was not the intent of the CSA.

We would appreciate confirmation, or a change to section 5.1 of the Companion Policy, to clarify that disclosure to unitholders at the fund level is considered complete for all privately held funds and that disclosure to a unitholder level is not required (ref page 518 of Appendix A).

Section 4.1(g)

With respect to section 4.1(g), a requirement to disclose the total commissions paid by a client during the period is useful, and we find the clarification in section 5.3(4) of the Companion Policy to be helpful. However, in AIMA Canada's opinion there are two items with respect to this section and the Companion Policy that should be modified; (i) that the adviser provide a "reasonable estimate of the portion of those commissions that represents the amounts paid or

accumulated to pay for goods or services other than order execution…" (section 4.1(g)), and (ii) the requirement that "advisers that have disaggregated their disclosure should also include firm wide disclosure." (CP section 5.3(4)).

Section 4.1(g) Services other than order execution

AIMA Canada agrees that the ability to track and report on payments for independent third party research and services purchased is reasonable and practical. However, we submit that any attempt by an adviser to estimate the portion of bundled commission charges that relates to services other than order execution is inherently fraught with subjectivity and will not be comparable between advisers because of differing methodologies that will be employed. Such lack of comparability lessens the value and usefulness of such information to investors.

We recommend that this requirement be removed from section 4.1(g).

If, however, the CSA believes that such disclosure is meaningful and of value to investors, we suggest that in place of advisers being required to make such estimates, the broker-dealer community that provides the bundled services should be required to provide to their adviser clients the necessary data, such as a percentage of the total commissions paid to the broker-dealer, in order to make such estimates. As the providers of the services, generally with sophisticated costing systems in place, the broker-dealers are in a much better position to make such determinations. This would help to ensure consistency of estimates across the adviser community.

Section 4.1(g) Aggregation of commissions

With respect to the aggregation requirement as outlined in the Companion Policy section 5.3(4), AIMA Canada strongly believes that advisers should not be required to disclose the total amount of commissions paid by the firm across all accounts. In AIMA Canada's view such information is extremely confidential and proprietary. Any disclosure of such amounts to clients (and to other third parties which will inevitably occur) could adversely impact an adviser's business. Additionally, disclosure of a total dollar amount of commissions does not provide any meaningful information to a client, i.e. the client would know what percentage of the total commissions they paid, but would have no basis for determining whether it was more or less than other clients or represents a competitive level of commissions and their usage.

AIMA Canada believes that disclosure of the ratio of total firm wide commission costs to the assets managed would be more relevant information for most investors. This would allow client comparisons of the ratio for their account to the firm total, as well as allowing comparisons with other advisers.

Conclusion

In summary, AIMA Canada believes that the following changes or clarifications are required with respect to the disclosure obligations of NI 23-102:

1. **Disclosure of the suppliers of goods and services and the nature of what services were received should be made available upon client request.**
2. **For all privately offered investment funds, confirmation that disclosure of total costs at the fund level only is considered sufficient.**
3. **The requirement of section 4.1(g) to provide a reasonable estimate of the amount of commissions paid for services other than order execution should be removed when there are bundled**

commissions, unless the broker-dealers are mandated to provide an estimated breakdown to their adviser clients.

4. **The requirement to disclose the total amount of commissions paid by a firm be removed and replaced by disclosure of a ratio of commission costs to assets under management.**

We appreciate the opportunity to provide the CSA with our views on this proposal. Please do not hesitate to contact the following members of the working group with any comments or questions that you might have. We would appreciate the opportunity to meet with you in order to discuss our comments:

Ian Pember, Hillsdale Investment Management Inc. (416) 913-3920 ipember@hillsdaleinv.com
Co-Chair, Legal & Finance Committee, AIMA Canada

Dawn Scott, Torys LLP (416) 865-7388 dscott@torys.com
Co-Chair, Legal & Finance Committee, AIMA Canada

Phil Schmitt, Summerwood Capital Corp. (416) 628-8400 pschmitt@summerwoodgroup.com
Chair, AIMA Canada

Yours truly,

ALTERNATIVE INVESTMENT MANAGEMENT ASSOCIATION
Canada Chapter

By: _____ By: _____

By: _____

ATTACHMENT A
PROPOSED NATIONAL INSTRUMENT 23-102
AIMA CANADA COMMENTS RE SPECIFIC QUESTIONS

Question 1:

What difficulties might be caused by a temporal standard for order execution services that might differ from the standard applied by the SEC, especially in the absence of any detailed disclosure requirements in the U.S.? In the event difficulties might result, do these outweigh any benefit from having a temporal standard that results in consistent classification of goods and services based on use?

In AIMA Canada's opinion the CSA application of the temporal standard for order execution services is appropriate and we do not foresee any major difficulties being caused by the fact that it differs from the standard applied by the SEC.

Question 2:

What difficulties might be encountered by requiring the estimate of the aggregated commissions to be split between order execution and goods and services other than order execution? What difficulties might be encountered if instead the requirement was for the aggregate commissions to be split between research services and order execution services?

Please see our comments above re section 4.1(g) services other than order execution.

Question 3:

As order execution services and research services are increasingly offered in a cross-border environment, should the Proposed Instrument allow an adviser the flexibility to follow the disclosure requirements of another regulatory jurisdiction in place of the proposed disclosure requirements, so long as the adviser can demonstrate that the requirements in that other jurisdiction are, at a minimum, similar to the requirements in the Proposed Instrument? If so, should this flexibility be solely limited to quantitative disclosure given that the issues associated with differences in quantitative disclosure requirements between regulatory jurisdictions are likely greater than the problems associated with differences in narrative disclosure requirements? In addition, should there be limitations on which regulatory jurisdictions an adviser may look to for purposes of identifying suitable alternative disclosure requirements and, if so, which jurisdictions should be considered eligible and why?

In AIMA Canada's opinion it would not be reasonable to impose the requirements of NI 23-102 on registered advisers operating in foreign jurisdictions, particularly those operating in the U.S. or the U.K. We recommend that foreign advisers be entitled to rely on the rules of their home jurisdiction, as long as it can be reasonably demonstrated such rules are comparable to NI 23-102. There should not be any distinction between qualitative

or quantitative disclosure. This approach would recognize the relative size of Canada's equity markets in the global context and the fact that many Canadian investors, including advisers, utilize foreign advisory firms.

Question 4:

Should a separate and longer transition period be applied to the disclosure requirements to allow time for implementation and consideration of any future developments in the U.S.? If so, how long should this separate transition period be?

In AIMA Canada's opinion the transition period allowed is adequate.