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SENT BY EMAIL
CSA Member Commissions

Attn: Ms Anne-Mari Beaudoin
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and Mr. John Stevenson
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Dear Sirs,

Re: Proposed NI 31-103

I am writing to provide the comments of VenGrowth Asset Management Inc. on proposed NI 31-103. By way of background, VenGrowth is a diversified asset manager with over $1 billion under management. Through our subsidiaries, we manage labour-sponsored funds, private venture capital funds and retail mutual funds under the "Criterion" banner.

We are generally supportive of the Instrument. Many of its central principles are logical changes to the registration regime, including the "business trigger" test and regulation of fund managers. However, we have some concerns with various aspects of the Instrument which are set out below.

1. *Permitted Client Definition.* In clause (k) of the definition of "permitted client", why is the reference to a fund managed by a "portfolio manager" instead of to an "adviser"? The only difference is that the definition, as currently worded, would arguably not apply to a fund managed by a restricted portfolio manager. We cannot think of any reason why this should be the case – a restricted portfolio manager, acting within the scope of its restrictions, is as qualified as a non-restricted portfolio manager to advise a permitted client.

2. *Minimum Capital – Objectives.* The companion policy to the Instrument states that the minimum capital requirements are "intended to ensure a registered firm can meet the demands of its counterparties and, if necessary, wind down its business in an orderly fashion without loss to its clients". Obviously, these objectives are worthy of the attention of regulators. However, we believe that the proposed regime does not address them in a focused manner, especially in the case of fund managers.

Meeting the demands of counterparties is, for investment funds, generally not determined by the solvency of the manager – it is based on the solvency of the fund. Fund assets are segregated and are "bankruptcy remote" from the manager. Counterparties do not care, and often have no idea, about the financial condition of the fund manager.

In the case of a wind-down of a fund manager, regulators are right to be concerned that investment fund assets be dealt with in an orderly fashion. But again, why is minimum capital the best way to do this? Surely the better approach would be to look at the transition process, including ensuring that management agreements adequately protect funds in the event of a manager's insolvency and that someone (the IRC being the obvious candidate) has authority to exercise a fund's right to terminate an insolvent manager and oversee a transition. A minimum capital regime does not do anything to assist this transition, it only delays the need for such a transition (and then only if the regime is designed correctly, which we argue below is not practically possible).

We suspect that there is another rationale for the minimum capital requirement, which is not specifically mentioned in the companion policy – regulators wish to ensure that registrants have a minimal level of financial capacity and in particular that new entrants to the industry have some critical mass. Again, we do not entirely disagree with this rationale, but we believe that the minimum capital rules are a very complex and burdensome way of achieving it. Why not simply require fund managers or their affiliates to hold a minimum $500,000 investment in their funds until such time as they reach a threshold of AUM (say $100 million)? Apart from ensuring financial capacity, this also would help align the incentives of fund managers and their investors. And it would be much simpler than what the Instrument proposes.

3. *Minimum Capital – Our Objections.* We believe that the minimum capital regime in the Instrument is too blunt to be effective for fund managers. Given the myriad ways that managers organize their businesses, there is simply no way to pick a fixed level of working capital that is appropriate for everyone. Some fund managers (particularly those who outsource back-office functions and/or do not employ large wholesaling teams) require virtually no capital to run their businesses properly; others (such as the large mutual fund complexes and bank-managed funds) require a massive investment in personnel, systems and technology. The minimum levels suggested in the Instrument cannot possibly be right for everyone.

   Moreover, it seems inevitable that managers will either breach these rules routinely in cases where there is no valid reason for concern; or will be forced to distort their businesses to comply, for no good reason. Long term debt that is due within a year but readily re-financeable would count as a "current liability" – so the rules effectively force all managers to refinance debt one year sooner than otherwise required. This is a significant burden and a deterrent to managers

borrowing to make long term investments in their businesses. Why are ALL guarantees included as current liabilities, regardless of whether the guaranteed obligation itself is short term or long term and regardless of whether the guarantee represents a liability under GAAP? Why include insurance deductibles as a liability but ignore all the other contingencies that every manager faces? There are dozens of factors that cause fluctuations in the working capital of a fund manager over the course of the business cycle. There is no way to design a working capital formula that is not burdensome to comply with on an ongoing basis and excessively random in which firms it fingers as under-capitalized.

4. *Insurance.* We suggest that the Instrument clarify that the various insurance requirements only apply to insurance of the risks described in Schedule A. For example, we do not believe that 4.24 ought to apply to D&O or E&O insurance. And if deductibles for non-Schedule A types of insurance are included in the minimum capital calculation, it will only serve as a disincentive to get that coverage in the first place, which cannot be good for investors.

5. *Complaints.* We believe that the companion policy should clarify that the complaints procedures only apply to complaints brought by or on behalf of a client (I believe the MFDA complaints rules have a similar provision). As written, the provisions would arguably apply to a wide range of unintended situations including complaints by employees and counterparties.

6. *Conflicts.* Section 6.1(4) should apply not just to the manager of a fund with an IRC, but also to an adviser of such a fund. If the manager and the adviser are affiliated then the IRC will have jurisdiction over the matter. If the manager and adviser are at arm's length, then the manager's interests would be properly aligned with those of the fund and the manager should have the incentive, ability and mandate to resolve the conflict without the need for regulation.

We would be pleased to discuss our comments with you at any time – you may contact the undersigned at jay@vengrowth.com.

Yours truly,

Sarah Gray for Jay Heller

Jay Heller, General Partner