May 29, 2008

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
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

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

- and -

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

Dear Sirs/Mesdames:

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

This letter is being written on behalf of the Canadian chapter (**"AIMA Canada"**) of the Alternative Investment Management Association (**"AIMA"**) and its members to provide our comments to you on the Canadian Securities Administrators' (**"CSA"**) revised draft proposed National Instrument No. 31-103 *Registration Requirements* (the **"Instrument"**) and the revised draft Companion Policy 31-103 *Registration Requirements* (the **"Companion Policy"** and collectively with the proposed Instrument, **"NI 31-103"**).

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 1,280 corporate members, throughout 49 countries, including many leading investment managers, professional advisers and institutional investors. AIMA's Canadian chapter, established in 2003, now has over 80 corporate members.

The objectives of AIMA are to provide an interactive and professional forum for our membership and act as a catalyst for the industry's future development, to be the pre-eminent voice of the industry to the wider financial community, institutional investors, the media, regulators, governments and other policy makers and to offer a centralized source of information on the industry's activities and influence, and to secure its place in the investment management community.

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

This comment letter has been prepared by a working group of the members of AIMA Canada, comprised of managers of hedge funds, fund of funds and accountancy and law firms with practices focused on the alternative investments sector.

Our key overall comments on NI 31-103 are set out below. Our comments with respect to specific sections and issues related to NI 31-103 are set out in Schedule A.

General Comments

We reiterate our support of 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 to thereby enhance capital market integrity. We feel that this initiative will assist market participants in conducting business across Canada.

It is our view that to achieve its objectives, NI 31-103 must ensure a level playing field among all capital market participants in Canada (both domestic and foreign) and assist participants in the Canadian capital market in playing an active and competitive role in the global investment community. The Canadian capital market is a very small portion of the global market, and, in our view, the CSA need to maintain a regulatory system that keeps them internationally competitive.

We urge the CSA to implement NI 31-103 in each jurisdiction to the greatest extent possible in the same form, and, more importantly, to ensure that staff in each jurisdiction administer and interpret NI 31-103 in a uniform and consistent fashion. Although we understand that certain carve-outs have been maintained in NI 31-103 because of historical practices and different approaches to regulation and enforcement, as well as concerns about the implications for local markets, we submit that the adoption of NI 31-103 as a national instrument is an opportunity for the CSA to move forward with a harmonized regime, without distinction between jurisdictions. We are concerned about the market impact of substantial inconsistencies amongst the jurisdictions, such as the requirement for sub-advisers to register in Manitoba if they are registered in another jurisdiction. We believe that local distinctions should be maintained only if there is a substantive and compelling reason.

We note with substantial concern that many of the provisions contained in NI 31-103 are proposed to be moved to the *Securities Act* (Ontario) (the **"Ontario Act"**). The value of NI 31-103 as an instrument which will harmonize and streamline the securities registration regime in Canada is significantly reduced by providing that so many of its provisions are not applicable in Ontario and providing for their equivalents in the Ontario Act. The removal of sections of NI 31-103 to the Ontario Act will create a fragmented securities regulatory regime substantially similar to the status quo, lessening the intended reduction in the regulatory burden and cost to market participants. If provisions are removed from NI 31-103 and inserted in the Ontario Act, we feel that it is essential that such provisions contain language which is identical to the language used in NI 31-103 or National Instrument 45-106, as the case may be. We have noted a number of inconsistencies in drafting between the proposed amendments to the Ontario Act and NI 31-103 and NI 45-106. We have submitted our comments on this issue to the Ontario Ministry of Finance with a copy to your attention.

Exemption from Dealer Registration Requirement for Advisers

(Section 2.2 of Instrument, Section 2.4 of Companion Policy)

We feel that language of Section 2.2(1) of the Instrument is unclear, with the result that its intended application is difficult to determine. We query whether "buys or sells", "pooled fund" and "administered" should be "trades in", "investment fund" and "managed", respectively. We also query the need for a fully-managed account to be "created" by the adviser seeking to rely on this section. Frequently, advisers are purchased by other advisers for the specific purpose of acquiring the fully-managed account business of the selling adviser, and, as currently drafted, the exemption provided in Section 2.3 of the Instrument would not appear to be available in such circumstances.

We are also concerned that the guidance in Section 2.4 of the Companion Policy is inconsistent with Section 2.2 of the Instrument. The trigger for the denial of the exemption in section 2.2(2) of the Instrument "primarily for the purpose of qualifying for the exemption" is not the same as "operating an investment fund as a core or principal activity" contemplated by the Companion Policy.

We recognize that the CSA is of the view that advisers who operate investment funds as a core or principal business activity should be registered as dealers. However, because Section 2.2 of the Instrument may only be relied upon in respect of fully-managed accounts of the adviser (which accounts will have the benefit of the conduct rules in Part 5 of the Instrument), we query what regulatory benefit would be gained (or market risk reduced) by requiring an adviser to register as a dealer in these circumstances (in addition to its registration as adviser and investment fund manager). We would appreciate the CSA providing additional guidance on why dealer registration is required in these circumstances.

We are concerned that the guidance in Section 2.4 of the Companion Policy clouds the business trigger analysis for dealers. In our view, the dealing activity of a registered adviser will always be incidental to its business of advising, regardless of whether it advises investment funds, fully-managed accounts, or a combination of both. This is apparently not the view of the CSA. We would appreciate the CSA providing additional guidance on the increased market risk caused by an adviser advising an investment fund rather than fully-managed accounts.

We would also appreciate further guidance on what the term "active management", as mentioned in Section 2.4 of the Companion Policy means. In order to meet it obligations to its clients, an adviser must always provide "active management" of its client's portfolios, notwithstanding there may not be active or frequent trading in a client's account.

Investment Fund Manager Category

(Section 2.6 of Instrument, Section 2.8 of Companion Policy)

Section 2.6 of the Instrument states that an investment fund manager is an entity that is permitted to direct the business, operations or affairs of an investment fund. We query whether the use of the word "permitted" is intended to allow an entity that would otherwise fall under the definition of investment fund manager to delegate the direction of the business, operations and affairs of the investment fund to another entity that is registered as investment fund manager, thereby removing the requirement for it to become registered as an investment fund manager.

The Companion Policy does acknowledge that many investment funds, trusts and companies currently delegate some or all of their management functions to a management company. However, nowhere in the Instrument or Companion Policy is it clarified that such delegation would obviate the need for the general partner for example, to register as an investment fund manager so long as the management company is so registered. (In contrast, under current registration requirements, where advisory or distribution services are delegated, there is no need for any entity other than the delegatee who has assumed the responsibility to register as an adviser or dealer, as the case may be.)

As discussed below, we feel that NI 31-103 should be revised to explicitly provide that an entity that would otherwise be required to register as an investment fund manager will not be required to so register if it

delegates the business, operations and affairs of the investment fund to a third party that is registered as an investment fund manager.

As mentioned in our previous comment letter, managers of alternative investments (as well as many managers of other investment funds) often structure their investment funds as limited partnerships. Liability concerns surrounding limited partnership law in many Canadian jurisdictions have resulted in investment funds structured as limited partnerships being constituted with separate (but affiliated) general partners for each investment fund. The general partners of these investment funds each then enter into a management agreement with a registered adviser in which they completely delegate investment advisory and management services to the registered adviser.

Under the current form of NI 31-103, each of the general partner entities as well as the adviser would be required to obtain registration as an investment fund manager. This scenario would result in multiple registrations of the same people and place a heavy ongoing cost and compliance burden on investment fund managers who operate their business through multiple investment funds.

Proficiency Requirements for Chief Compliance Officers of Investment Fund Managers

(Section 4.15 of Instrument, Section 2.9 of Companion Policy)

We have considerable concern that the experience requirements for chief compliance officers (**"CCO's"**) of investment fund managers will create a significant and unwarranted barrier to entry for new investment fund managers. Because the experience requirement for the CCO of investment fund managers who do not have a CFA charter or professional designation must be obtained with a registered investment fund manager, new investment fund managers will have no choice but to secure the services of an individual with a CFA charter or professional designation until such time as NI 31-103 has been in force for a period of five years.

It is our view that the compliance function in all registered firms and other entities such as financial institutions is similar in many respects. We feel that the experience necessary to discharge the responsibility of CCO of an investment fund manager can be gained while working for any entity with a substantial compliance component, including a dealer, adviser, investment fund manager or financial institution. We note that the CSA has also recognized this, as the experience requirement for a CCO of a portfolio manager who does not have a CFA charter or professional designation may be earned at either a dealer or adviser and the experience requirement for a CCO of a portfolio manager who does have a CFA charter or professional designation may be earned at either a dealer, adviser or financial institution. We question why the CSA feels that the experience necessary to perform the CCO function for an investment fund manager is so significantly different from that of the dealer, adviser or financial institution that it must be earned at an investment fund manager. We also question why the experience requirement for the CCO of a portfolio manager who has a CFA charter or professional designation need not be consecutive while the experience requirement for the CCO of an investment fund manager who has a CFA charter or professional designation must be consecutive.

We feel that the Instrument should be amended to permit the experience requirements of the CCO of an investment fund manager to be gained in the same manner as the experience requirements of the CCO of a portfolio manager (i.e. at a dealer, adviser or financial institution) or through experience gained at an investment fund manager.

It is also our view that if the CSA believes any advising representative of a portfolio manager has the proficiency to act as CCO of a portfolio manager (as provided in section 4.13(a) of the Instrument), such individuals would have the proficiency to act as CCO of an investment fund manager and, consequently, subparagraph (a) of section 4.13 should be inserted in section 4.15 as well.

Excess Working Capital Calculation

(Section 4.18 of Instrument, Section 4.7 of Companion Policy)

Line 9 of Form 33-103F1 Calculation of Excess Working Capital requires a deduction for the market risk of securities owned by a registered firm, in accordance with various rules. As the Instrument is currently drafted, an investment fund manager that invests in its own investment funds not offered under a prospectus 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 an investment fund manager to have invested a significant portion of its resources (as well as the personal wealth of its owners) in any investment fund that it manages, as it aligns the interest of the investment fund manager with the investors in the investment fund. Investment fund managers may also temporarily invest excess cash in their fund, or will create investment funds to test new strategies before they are offered to investors. The calculation as drafted would penalize such activity by the registered firm, with the potential result that the investment fund manager will be forced to place such funds in cash, money market funds etc. This result could prevent the investment fund manager from developing new products for Canadian investors or earning higher returns on its investments.

We note that mutual funds qualified by prospectus only engender a 50% deduction, although in many cases these mutual funds can be invested in exactly the same instruments and, accordingly, would have the same liquidity issues in satisfying redemptions as an investment fund sold by way of offering memorandum. We submit that such a disparity, solely on the basis of how the fund is offered, is not warranted.

As outlined in Section 4.7 of the Companion Policy, we understand that the intent of the section is "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." Consistent with this objective, in our view, an asset can be considered to assist in meeting working capital needs if it is reasonably liquid and the ability to realize on the asset is under the control of the registered firm.

To meet this requirement, we propose that an investment in a pooled fund held by an investment manager be weighted at 50% of market value, consistent with mutual funds offered by prospectus, if: (a) the investment is in a fund managed by the investment fund manager; (b) at the time of calculation there are no restrictions

(such as lock ups) on the ability of the investment manager to redeem its investment; and (c) such investment can be redeemed or sold within a time period no longer than two months from the date the redemption notice is given. This allows for situations where a fund is valued monthly and a 30 day notice period is required.

Any other type of investments, particularly in investment funds not managed by the investment fund manager, would continue to be weighted at 100% of market value.

Financial Statement Requirements

(Sections 4.26 - 4.34 of Instrument)

In our view, the requirement in Sections 4.28(2) and 4.30(2) of the Instrument for dealers and investment fund managers to deliver interim financial statements within 30 days of quarter-end is unjustifiably inconsistent with the comparable provision in NI 81-106 and NI 51-102 for issuers where 60 days are provisioned for quarterly and semi-annual filings. We do not understand a policy justification for imposing different requirements for registrants and issuers. We note that it could be difficult for an investment fund manager to determine its revenues in order to meet the requirement if the financial statements for the funds that it manages are only required to be finalized in accordance with NI 81-106, for example where the net asset valueof a fund is determined monthly on a lag basis.

We also point out that the requirement to prepare annual and interim financial statements in accordance with GAAP as provided in Section 4.32(1) of the Instrument section 4.32(1) is not possible as it cannot be assumed that any or all registrants currently are qualifying enterprises for purposes of availing themselves of the differential reporting options under Section 1300 of the CICA Handbook (in order to achieve GAAP unconsolidated financial statements), and so consequently would either receive an adverse audit opinion from their auditors due to non-consolidation or would have to submit audited financial statements prepared on a "disclosed basis of accounting" which would not be GAAP. Furthermore, compliance with International Financial Reporting Standards requires consolidation, where applicable. It is our view that the policy objectives associated with the interim financial statement filing requirement (presumably to assess financial solvency) could be met with the filing of a balance sheet and income statement and the Instrument should be modified accordingly.

With respect to the annual financial statements we suggest that Section 4.32(1) of the Instrument be modified to acknowledge that these statements can either be delivered with an adverse opinion due to non-consolidation or be prepared on a disclosed basis of accounting that is different from GAAP due to non-consolidation and receive an unqualified audit opinion.

Holding Client Assets in Trust

(Section 5.10(2) of Instrument)

Section 5.10(2) of the Instrument requires registered firms to hold cash on behalf of clients in a designated trust account with a Canadian financial institution or a Schedule III bank. We would appreciate guidance on what "holds cash on behalf of clients" means. In our view, the phrase should be limited to situations in which a registered firm deposits its client's cash in its own account, and not to situations in which the cash is held in an account over which the registered firm has discretionary authority, e.g. a fund or segregated account with a prime broker or custodian. We would therefore request the CSA to explicitly clarify this in the National Instrument or in the Companion Policy.

If this interpretation is not correct, Section 5.10(2) of the Instrument does not reflect the realities of the Canadian capital market and is not feasible for many market participants, particularly when client assets are held with a custodian or prime broker outside Canada.

Many registered firms in both the alternative investment industry and the traditional investment industry operate their businesses using a prime broker that acts as custodian of the securities and cash of both the investment funds they manage as well as the segregated accounts of clients. Examples of these prime brokers are TD Securities and Scotia Capital in Canada and Goldman Sachs, Morgan Stanley and Bank of America outside of Canada. For alternative investment vehicles that utilize short positions and/or leverage, cash must generally be held with the prime broker as security. It would not be possible for these prime brokers to sweep excess cash on a nightly basis to a bank account with a Canadian financial institution, even for those prime brokers that are subsidiaries of Canadian financial institutions, as the necessary systems are not in place.

We note that Section 6.8 of National Instrument 81-102 *Mutual Funds* provides a specific exemption from the otherwise applicable requirement that assets of a mutual fund governed thereby be held by a permitted custodian or sub-custodian, those assets that are deposited with a dealer as margin for certain derivative transactions or with the counterparty on specified derivative transactions.

We also note that Section 5.35(c) of the Instrument permits non-resident registered firms to ensure that client assets are held by custodians and registered dealers who meet certain requirements. Canadian resident registered firms should not be held to a higher standard. It is our understanding that the Securities and Exchange Commission in the United States has a similar exemption which allows SEC registered advisers to hold funds with qualified custodians, which includes foreign financial institutions. In the interest of maintaining a level and competitive playing field internationally, Canadian managers should not be put at a disadvantage

This issue was brought to your attention in our original comment letter and the response of the CSA was that it would be addressed on a case by case basis. The feedback we have received from out membership is that there would be an extraordinarily large number of registered firms that would be unable to meet the

requirements of this section and that the volume of exemptions being requested could require a uniform exemption order.

Records Retention

(Section 5.16 of Instrument, Section 5.6 of Companion Policy)

Section 5.16(4) of the Instrument requires registered firms to retain relationship records for seven years from the date the person or company ceases to be a client of the firm. Relationship records will include email correspondence and voice mail messages. Most registered firms have computer systems which will permit the retention of these records. However, these computer systems have been configured to save such information on a user basis not a client basis. Consequently, in order to comply with this requirement, registered firms will need to implement new computer systems which permit the retention of information on a client basis or retain all computer based records indefinitely. Both alternatives will result in significantly increased costs to registered firms.

We suggest that the CSA impose a materiality threshold on the relationship records that registered firms must preserve and or permit registered firms to determine what relationship records they feel it is appropriate to retain, subject to the general requirement in section 5.15. This would be consistent with the principled approach taken in other areas of NI 31-103.

Dispute Resolution Service

(Section 5.29 of Instrument, Section 5.12.3 of Companion Policy)

Section 5.29 of the Instrument requires registered firms to participate in an independent dispute resolution service. We are concerned that compliance with this requirement will necessitate retaining such a service on an annual basis and paying the service an annual retainer. The Companion Policy seems to suggest that the CSA's concern is that clients be made aware of all available dispute resolution mechanisms and that registered firms be willing to resolve disputes using an independent dispute resolution service. If this is the case, it is our view that section 5.29 of the Instrument should be amended to state that registered firms be required to advise clients that they are willing to resolve disputes using independent dispute resolution services, and if the client so chooses, to participate in an independent dispute resolution service. A conforming change should also be made to Section 5.4(3)(i).

Net Asset Value Adjustments

(Section 4.30 of Instrument)

We are concerned about the administrative burden that will be imposed on investment fund managers resulting from the requirement to report all net asset value adjustments set out in Section 4.30 of NI 31-103. Although the number of net asset value adjustments varies amongst investment funds, the experience of our members

indicates that the vast majority are caused by operational issues with the investment fund's custodian or administrator. While investment fund managers review the net asset value calculations and adjustments of their custodians or administrators, they are rarely in a position to prevent net asset value adjustments from being required. Consequently, the frequency of net asset value adjustments is not an accurate indicator of problems with an investment fund manager. It is our view that a materiality threshold would be an appropriate balance between the CSA's desire to monitor the activities of investment fund managers and the increased administrative burden and cost such reporting will place on investment fund managers.

Prohibition on Certain Crossed Trades

(Section 6.2(2)(c) of Instrument)

Section 6.2(2)(c) of NI 31-103 prohibits cross trades between segregated accounts managed by an adviser. This represents a significant change to section 118 of the *Securities Act* (Ontario), and comparable legislation in other jurisdictions. Investment funds governed by NI 81-107 will be exempt from this new prohibition which indicates that a complete ban on cross trading was not deemed necessary by the CSA. In our view it is not appropriate to make a distinction between investment funds subject to NI 81-107 and those that are not. When NI 81-107 was drafted, it was deliberately not extended to pooled funds or segregated accounts and it should not be extended indirectly to pooled funds or segregated accounts by virtue of the Instrument.

In addition, registered advisers owe a fiduciary duty and a contractual duty of care to their clients. These duties are met in part by obtaining best execution. If an adviser exercises its judgment that a cross trade is in the best interests of two clients, and the clients have contractually acknowledged that the adviser may arrange cross trades between clients, we do not believe that a prohibition in such circumstances would be appropriate. In our view, the consequence of the proposed prohibition will be that clients will face increased transaction costs as the refusal to allow cross trades will now expose these trades to higher commissions, market impact due to information leakage and potentially inferior pricing.

Transition

(Part 10 of Instrument)

NI 31-103 does not currently contain any transition provisions for international dealers and advisers. We urge the CSA to provide transition provisions for these parties in the final version of the Instrument.

Conclusion

AIMA fully supports the efforts of the CSA to achieve the policy goals of NI 31-103. We believe the changes to NI 31-103 described in this letter are required in order to effectively achieve its policy goals in a manner which balances policy concerns with business realities and provides clarity of regulatory requirements 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 Canada 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

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By: Dawn Scott

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SCHEDULE A

COMMENTS ON SPECIFIC SECTIONS OF THE INSTRUMENT

1.	Section 1.1(1)	Delete the phrase "by an adviser" from the definition of "fully-managed account" as the defined term is used in the Instrument to refer to entities other than advisers (such as in items (i) and (j) of the definition of "permitted client").
2.	Section 1.1(1)	Conform item (e) of the definition of "permitted client" to item (i) of the definition of "accredited investor" in NI 45-106.
3.	Section 1.1(1)	Add ", exempt from registration as an adviser" after "portfolio manager" in item (k) of the definition of "permitted client".
4.	Section 1.1(1)	Conform item (l) of the definition of "permitted client" to item (r) of the definition of "accredited investor" in NI 45-106.
5.	Section 1.1(1)	Delete "or its equivalent in another currency", from item (m) of the definition of "permitted client". While this phrase does add clarity to the section, the equivalent currency concept is not mentioned elsewhere in securities legislation (such as NI 45-106) and the inclusion of the phrase in the Instrument raises the question of why the phrase is not used elsewhere.
6.	Section 1.1(1)	Provide guidance on the timing of the certification required by item (m) of the definition of "permitted client".
7.	Section 1.1(1)	In item (n), delete "the trustee of which is a trust company referred to in paragraph (i)" as many investors structure their investment holdings using trusts, such as family trusts, that utilize trustees other than registered trust companies.
8.	Section 1.1(1)	Delete "or its equivalent in another currency", from item (o) of the definition of "permitted client". See the discussion regarding item (m) of the definition of "permitted client" above.
9.	Section 1.1(1)	Add "as at the end of its most recently completed financial year for which it has prepared financial statements" to the end of item (o) of the definition of "permitted client".
10.	Section 1.1(1)	Change "corporation" in item (o) of the definition of "permitted client" to "company" and extend the application of item (o) of the definition of "permitted client" to non-corporate entities.

11.	Section 1.1	Conform item (n) of the definition of "permitted client" to item (s) of the definition of "accredited investor" in NI 45-106.
12.	Section 2.1(d)	Add "in" after "…on behalf of a client,".
13.	Section 2.1(e)	Revise to read: "restricted dealer, being a dealer that is limited by conditions on its registration to ~~trading~~ **trade** in a specified security, **a specified** class of security, ~~or~~ the securities of a **specified** class of issuer, **or a combination of such restrictions**". (emphasis added) 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.
14.	Section 2.3(b)	Change "advising" to "advise".
15.	Section 2.3(b)	Make the same changes as those proposed to Section 2.1(e).
16.	Section 4.1	Remove "the" where it precedes "CSI Global Education Inc.".
17.	Section 4.16	Change title of this section to "Grandfathered Registered Individuals".
18.	Section 4.16(1)	Revise to read "…an individual registered in a category referred to in a section of this Division, the individual is exempt from complying with the requirements of that section". (emphasis added)
19.	Section 4.21(2)	Delete "lawfully" as it is not practicable for a registered firm to determine whether an insurer is lawfully carrying on business.
20.	Section 4.22(3)	Same comment as for Section 4.21(2).
21.	Section 4.23(2)	Same comment as for Section 4.21(2).
22.	Section 4.31(b)	Clarify that if the registered firm does not have directors, individuals acting in an analogous capacity will sign.
23.	Section 5.3(2)	Change the 10% threshold to 25% and otherwise conform the specific requirements of Sections 5.3(2) and 5.3(3) dealing with establishing beneficial ownership to the requirements in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada). While we recognize that the rules of the Investment Dealers Association of Canada fix the beneficial ownership threshold at 10%, it is our view that conformity to the federal legislation is more appropriate. Not all registered firms are members of the Investment Dealers

Association of Canada, but all registered firms must comply with the federal legislation.

24. Section 5.3(7)

Confirm that exemption contained in Section 5.3(7) applies to fund purchases received via Fundserv. Section 5.5 of the initial draft of the Instrument provided that know-your-client and suitability requirements do not apply to a registrant that executes a purchase or sale of a security on an instruction from another registrant or a financial institution. This clearly allowed advisers to accept trades through Fundserv for clients of another registrant without meeting know-your-client and suitability requirements. The current language in Section 5.5(4) of the Instrument states that the section does not apply if client is a registrant or Canadian financial institution, not if the trade is received on instruction through them. In many cases, the entity for whom the order is placed client will not be a registrant or Canadian financial institution but the client of the registrant or Canadian financial institution.

25. Section 5.4

As drafted, a number of the Sections of Part 5 – Division 1 (Sections 5.3(1), 5.3(2), 5.3(4), 5.3(5)(b), 5.3(6), 5.4(1), 5.4(2), 5.4(3), 5.5(1), 5.5(2), 5.3(3)(b), 5.8(1), 5.8(2)(a) and 5.9(1)) refer to "registrant", with the result that the obligation in the section will apply to both the registered firm and to each registered individual. It is our view that the obligation in these sections should rest with the registered firm and not the registered individual. As matter of law, entities must act through their representatives, so consequently, the registered individual of a registered firm will also comply with the obligation.

In our view, imposing the applicable obligation on both a registered firm and its registered individuals, caused by retaining the current language, would be duplicative and unduly burdensome, without providing clients with a material degree of additional protection or benefit. It also has the potential to cause confusion regarding the respective responsibilities of registered firms and their registered individuals.

We recognize that changing registrant to registered firm will mean that that the CSA will not have recourse against the registered individual in the case of non-compliance, but it is our view that in such circumstances it should be the registered firm against whom the CSA takes action. The balance of the obligations and duties in the Instrument are those of the registered firm and Part 5 of the Instrument should be no different.

26. Section 5.4(2)(a)

Same comment as for Section 5.4(1)(a).

27.	Section 5.5(4)	Same comment as for Section 5.3(7).
28.	Section 5.14	Change "registered adviser" to "registered firm".
29.	Section 5.16(2)	Clarify that records may be kept off-site provided Section 5.16(1) is otherwise complied with.
30.	Section 5.25(d)	Revise to read "…the board of directors of the registered firm**, or individuals acting in a similar capacity, if a board of directors does not exist,** for the purpose of…". (emphasis added).
31.	Section 5.27	Revise to clarify that only sections 5.29, 5.30, 5.31 and 5.32 are carved-out and that section 5.28 applies to all registered firms.
32.	Section 5.31	Clarify that complaints to be reported are only those related to trading or advising activity as provided in Section 5.29(2). Consider revising to require a summary of complaints, showing nature of complaints, numbers made, resolved and unresolved by major category/nature. In the alternative, clarify what details are to be provided.
33.	Section 5.34	Add "local" before "jurisdiction" whereever it appears in this section for greater clarity.
34.	Section 6.1(2)	Clarify what is expected by "respond to".
35.	Section 6.1(1)	Revise section to read "… identify existing conflicts of interest and conflicts **of interest** the registered firm, acting reasonably…". (emphasis added)
36.	Section 6.2(2)	Change "an investment portfolio managed by it" to "a client".
37.	Section 6.2(2)(c)	Delete this section. See comment under heading "Prohibition on Certain Crossed Trades" in body of letter.
38.	Section 6.2	Conform the language in the last sentence of Section 6.2(2)(a) and Section 6.2(2)(b).
39.	Section 6.4(1)(c)	Revise to read "… between the registered firm **and** the connected issuers…". (emphasis added)
40.	Section 6.4	Explain the difference between a "material" change and a "significant" change as the wording of the Instrument has changed.
41.	Section 6.4(3)	Change "registrant" to "registered firm" where it appears.

42.	Section 6.4(4)	Change “registrant” to “registered firm” where it appears.
43.	Section 6.4(5)	Change “registrant” to “registered firm” where it appears.
44.	Section 6.4(6)	Revise to read “… the names of the registered firm and the mutual fund are sufficiently similar to suggest that they are related”. It is not possible for the names of 2 entities to constitute disclosure that they are affiliated. In addition “affiliated” has a specific meaning in securities legislation, and would rarely, if ever, apply to the relationship between the registered firm and the mutual fund.
45.	Section 6.5	Add an exemption to permit a registered firm to recommend the purchase of units in a fund for which it is an adviser or an investment fund manager.
46.	Section 6.5(c)	Revise to read “… the names of the registered firm and the mutual fund are sufficiently similar to suggest that they are related”. It is not possible for the names of 2 entities to constitute disclosure that they are affiliated.
47.	Section 6.5(d)	Revise to read “… the names of the registered firm and the scholarship or educational plan or trust are sufficiently similar to suggest that they are related”. It is not possible for the names of 2 entities to constitute disclosure that they are affiliated.
48.	Section 6.6	Add an exemption to permit a registered firm to act as an adviser in respect of securities in a non-reporting issuer investment fund for which it is an adviser or an investment fund manager. It is not appropriate to import the independent review committee requirements of NI 81-107 to pooled funds which is the result of Section 6.6(2)(a). When NI 81-107 was drafted, it was deliberately not extended to pooled funds and it should not be extended indirectly by virtue of the Instrument. Add an exemption where an issuer disclosure statement has been provided (similar to the existing exemption in section 227(2)(b) of the Ontario Regulation).
49.	Section 6.7(2)(b)	Explain the difference between a “material” change and a “significant” change as the wording of the Proposed Instrument has changed.
50.	Section 6.15	Section 6.15(2) is not necessary given the application of section 10.9.
51.	Section 7.1	Revise to clarify that a registered individual whose registration is suspended may not act as a dealing representative, advising representative or associate advising representative in the suspended category.

52.	Section 7.3(2)	Replace "investment dealer" with "dealing representative".
53.	Section 7.4(2)	Replace "investment dealer" with "dealing representative".
54.	Section 7.5	Revise this section to read "A registered firm**'s registration** is suspended in the local jurisdiction…". (emphasis added)
55.	Section 7.8	Revise this section to read "Despite **Section** 7.7 (revocation of registration), if a hearing concerning a suspended registrant is commenced under **securities legislation of a jurisdiction**, the **registrant's** registration remains suspended …".
56.	Section 8.2	Replace "distributes" with "trades" in the section and the heading.
57.	Section 8.3	Revise this section to read "The dealer registration requirement does not apply to an issuer that trades in securities of its own issue if the trade is done only through a registered dealer."
58.	Section 8.4	Conform the language of the exemptions in Sections 8.4(1) and 8.4(2) to Sections 2.18(1) and 2.18(2) of NI 45-106, respectively (although continue to extend their application to investment fund managers as well as the investment fund).
59.	Section 8.4(3)	Move "is" to just preceding "available" at the end of the section.
60.	Section 8.5	Conform Sections 8.5(b) and (c) to Sections 2.19(b) and (c) of NI 45-106, respectively.
61.	Section 8.6	Reverse the order of Sections 8.6 and 8.7 so they match the order of NI 45-106.
62.	Section 8.6	Replace "administers" with "manages" in Section 8.6(1)(a) and (3), or in the alternative, clarify the distinction between "administers" and "manages".
63.	Section 8.7	Add a dealer registration exemption for investment funds operating as private investment clubs.
64.	Section 8.8(2)	Delete "of Canada" as jurisdiction is defined by NI 14-101 (to conform language to NI 45-106).
65.	Section 8.9	Conform to Section 2.37 of NI 45-106.
66.	Section 8.14(1)	Revise to read: "The adviser registration requirement does not apply to a person or company that ~~engages in, or holds himself, herself or itself out as engaging in~~

is in the business of advising others, either through direct advice or through publications or other media, as to the investing in or the buying or selling of securities, including **specific** classes of securities and the securities of a **specific** class of issuers, not purporting to be tailored to the needs of the person or company receiving the advice." (emphasis added) The language proposed to be deleted is not necessary given the operation of the business trigger and otherwise makes the application of the business trigger confusing.

67. Section 8.14(2) — Replace "the adviser" with "the person or company" where ever it appears in Section 8.14(2).

68. Section 8.14(3)(b) — Revise this section to read "an option **to acquire** the security…". (emphasis added).

69. Section 8.15(2) — Add "in a jurisdiction" in Sections 8.15(2)(b), (c) and (d) after the phrase "permitted client".

70. Section 8.15(2) — Add "dealer" before "registration requirement".

71. Section 8.15(2)(f) — Revise this section to read: "trading in any securities with an investment dealer that is acting as principal if the international dealer is acting as principal or as agent for the issuer of the securities, **is acting** for **a** ~~another~~ permitted client, or **is acting for** for a person that is not a resident of Canada.". (emphasis added)

72. Section 8.16(2) — Add "in a jurisdiction" after the phrase "permitted client"

73. Section 8.17 — Revise this section to read: "The adviser registration requirement does not apply to ~~a person or company, not ordinarily resident in the jurisdiction,~~ **an adviser not otherwise required by the securities legislation of a jurisdiction to register as an adviser** in connection with that person or company acting as an adviser for a registered adviser, or for a dealer acting as a portfolio manager as permitted by section 2.5 **in the jurisdiction** *[exemption from adviser registration for IDA members with discretionary authority]* if" (emphasis added)

The proposed changes are based on our interpretation that the intention of the section is to permit an adviser that has no involvement in the capital markets of a Canadian jurisdiction to sub-advise an adviser in that jurisdiction. The phrase "not otherwise required by the securities legislation of a jurisdiction to register as an adviser" is intended to confirm that an adviser that is otherwise carrying on business in the jurisdiction as an adviser will still need to register. The basic trigger for registration should be the adviser registration trigger not a residency test.

74.	Section 8.17(d)	In our view sub-section 8.17(d) should be deleted. If it is the intention of the CSA that the requirements in sub-sections (a), (b), (c) and (e) are intended to apply to all sub-advisory relationships which is the result of sub-section (d), a specific section to that effect should be added to the Instrument. It is our view that where an adviser and sub-adviser are both registered in a jurisdiction, the sub-sections (a), (b), (c) and (e) should not be required.
75.	Section 8.18	Add the definition for "self-directed RESP" from NI 45-106 and replace "in a self-directed RESP to a subscriber" with "in a security to or from a self-directed RESP" in the preamble which is the language currently used in section 2.7 of Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions.
76.	Section 8.19	Add definitions for "approved credit rating" and "approved credit rating organization"?
77.	Section 8.20	Expand the definition of "eligible client" to include holding company, RESPs, RRSPs, and other persons controlled by or the beneficiaries of which are an eligible client or his or her spouse or children.
78.	Section 10.6(2)	This section appears to allow anyone to be CCO of a registered firm provided that they apply within one month of the Instrument coming into force. Is this section intended to apply only to individuals currently registered as chief compliance officers of registered firms?

COMMENTS ON SPECIFIC SECTIONS OF THE COMPANION POLICY

79.	General	The defined term "registrant" is used frequently in the Proposed Companion Policy. In a number of circumstances, it is unclear whether "registrant" is actually intended or whether "registrant" should be changed to "registered firm". Using "registrant" where "registered firm" is intended places obligations on registered individuals which do not appear in the Proposed Instrument and causes confusion. An example is section 5.11. See also comment 25 above.
80.	Section 1.3(a)	Provide clarification on the distinction between "directly" and "indirectly" in the heading of this section. Provide details of how someone can indirectly hold oneself out as being in a business. The indirect concept is not elaborated on in the text of this section.
81.	Section 1.3(b)	Provide details of the meanings of acting as an intermediary and acting as a market maker.

82.	Section 1.3(e)	Provide clarification on the distinction between "directly" and "indirectly" in the heading of this section. Provide details of how someone can indirectly solicit others. The indirect concept is not elaborated on in the text of this section.
83.	Section 1.4.1	Provide a definition of "securities issuer".
84.	Section 2.3	Clarify with "local" is used in this section when it is not used in similar contexts elsewhere in the Proposed Companion Policy.
85.	Section 2.8	Replace "administering" with "managing" at the beginning of the second paragraph. For greater clarity, replace "fund manager" with "investment fund manager" and "fund" with "investment fund" where they appear in this section.
86.	Section 2.8.1	Consider moving this section to the discussion of the business trigger. The two paragraphs in section 2.8.1 are inconsistent. The first paragraph states that investment fund managers will have to register as dealers for marketing and wholesaling, while the second paragraph states that investment fund managers do not have to register as dealers for marketing and wholesaling relating to the investment funds they manage. Please clarify that dealer registration is not required for an investment fund manager's marketing and wholesaling activities in respect of funds it managers, where such activities are limited to funds distributed only through a dealer and not directly by the investment funds manager.
87.	Section 4.5	Replace "restricted adviser" with "restricted portfolio adviser" where in appears in this section and the heading.
88.	Section 5.1	Replace "proxy" with "power of attorney".
89.	Section 6.4.4	Clarify the meaning of "restricted issuer".
90.	Section 6.8	Change "adviser" to "registered firm" where it appears in the section.

COMMENTS ON SPECIFIC SECTIONS OF SCHEDULE 1 OF FORM 31-103F1

91.	Section 1(d)	Under "Short Positions – Credit Required", Should the margin requirement for short positions in securities selling at $1.50 to $1.99 should be a percentage rather than $3.00?
92.	Section 1(d)	Under "Short Positions – Credit Required", securities selling at less than $0.25 should be "market value plus $0.25 per shares". (emphasis added)

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