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September 24, 2010

VIA E-MAIL AND COURIER

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
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

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Dear Sirs/Mesdames:

Re: Proposed Amendments to National Instrument 81-102 – Mutual Funds and to National Instrument 81-106 – Investment Fund Continuous Disclosure and Related Consequential Amendments

We are writing in response to the request for comments on the proposed amendments to National Instrument 81-102 – Mutual Funds and to National Instrument 81-106 – Investment Fund Continuous Disclosure and Related Consequential Amendments (the "**Proposed Amendments**"). Thank you for providing us with an opportunity to provide comments on the Proposed Amendments.

Invesco Trimark Ltd. ("**Invesco Trimark**") is a wholly-owned subsidiary of Invesco Ltd., a global asset management firm with over $570 billion in assets under management as of August 31, 2010, with substantial retail and institutional managed assets in Canada. Globally, subsidiaries of Invesco Ltd. manage over US$70 billion of money market assets.

We have eagerly anticipated the publication of the Proposed Amendments and agree that numerous changes to National Instrument 81-102 – Mutual Funds ("**NI 81-102**") are in order and timely. We agree that the current phase of amendments, largely codifying exemptive relief that has been provided under NI 81-102, is in order as it will ensure all market participants are subject to the same rules. Further, we would anticipate some financial savings for mutual fund managers by not having to apply for what has become "routine relief" and we applaud the Canadian Securities Administrators (the "**CSA**") for taking this step. At a time when regulators and governments are facing revenue concerns similar to those who are regulated, it is appreciated when cost-savings measures such as these are undertaken.

While we are largely in favour of the Proposed Amendments, we believe that it is appropriate for the CSA to go further than it has and to review and consider each and every provision of NI 81-102. We note that the distribution of mutual funds and the protections available to mutual fund investors have changed significantly during the decade that NI 81-102 has been in force. To that end, we have divided our comments into two parts. The first part of our letter contains comments on specific provisions of the Proposed Amendments, including comments on sections of NI 81-102 and related instruments being amended that should be further amended. The second part of our letter contains suggestions and recommendations for further amendments to NI 81-102 based on changes in industry practice, need for clarification, relief granted but not codified by the Proposed Amendments and the impact of foreign regulatory changes. We urge you to consider these additional suggestions and recommendations as soon as possible.

A. Comments on Proposed Amendments

Part 1 Amendments

In the definition of "floating rate evidence of indebtedness" we would encourage the CSA to elaborate on what is meant by "widely accepted market benchmark interest rate". In our experience, there have been a number of circumstances where such vague terminology is used in rule-making and, inevitably, the issuer gets into a debate with Staff of the Principal Jurisdiction over whether a particular thing is widely accepted. It seems likely that, in drafting this provision, Staff has in their minds a concept of what this means. We appreciate the need to use a broad term in the National Instrument itself, given that what is a widely accepted benchmark is subject to change; therefore, it would be appropriate to elaborate on the concept in the Companion Policy and/or to address Staff's views on what are widely accepted market benchmark interest rates in a Staff Notice issued from time to time as required. We believe that it is important for fund managers, in developing marketable products, to have a clear understanding of some of these more nebulous terms in order to avoid the inevitable, and often uncomfortable, discussion with Staff the day before the fund manager seeks to file a final prospectus.

We welcome the addition of the United Kingdom as a qualifying exchange to the definition of "index participation unit". We submit, however, that other exchanges should also be added. One of our affiliated companies, Invesco PowerShares Capital Management LLC sponsors many exchange-traded funds ("ETFs") listed on stock exchanges in Europe.

Typically, these ETFs would fall under the UCITS rules and in all cases, but for the exchanges on which they trade, they would qualify as index participation units. While most of the ETFs are listed in the United Kingdom, for business reasons, some ETFs are not listed in the United Kingdom but are listed in other European countries, including Ireland, France, Germany and Italy, all of which have well developed regulatory structures. As ETFs listed in those countries are typically governed by the same European rules as ETFs listed in the United Kingdom, we recommend that not only exchanges in the United Kingdom be included in the definition of “index participation unit”, but that also other European exchanges, including those listed above, be included in the definition.

We believe the definition of “index participation unit” should be further amended to be consistent with the definition of “index mutual fund” and would encourage the CSA to amend the definition of “index participation unit” along those lines. The current differences between the two definitions cause confusion and uncertainty among mutual fund managers who need to determine whether an investment qualifies as an index participation unit for purposes of complying with NI 81-102 and we can surmise no rationale for the differences in treatment between the two definitions. We believe the definition of “index mutual fund” is correct and appropriate.

Part 2 Amendments

We agree with the amendment to subsection 2.1(2) of NI 81-102 to exclude fixed portfolio ETFs from the concentration restriction. However, we do not understand why clause 2.1(2)(e) should be limited to equity securities, when section 2.1 itself applies to fixed income securities as well. As investors become increasingly concerned with yield, we would expect there to be an increase in fixed portfolio ETFs that invest in fixed income securities and believe the rationale to waive the limits on equity investments in these circumstances ought to apply equally to fixed income investments.

Money Market Funds

As noted above, Invesco has been recognized globally as a leading manager of money market mutual funds and has always placed safety of capital as the top priority, followed by liquidity and performance. We believe strongly that investors who place money into money market mutual funds expect, above all else, to get their money back. Invesco manages money market funds with safety of capital as the absolute priority. To that end, we have considered the proposals relating to money market mutual funds with our cash management group, who have also had the opportunity to consider United States Securities and Exchange changes to Rule 2a-7. We fully support the addition of section 2.18 to NI 81-102 as we believe the proposed changes to the money market fund requirements will reduce redemption related risks and largely address credit and interest rate risks.

Notwithstanding the foregoing, we suggest the CSA consider reducing the existing dollar-weighted average term to maturity limit where floating rate obligations’ terms are based on the date of the next rate setting from a period not exceeding 90 days to a period not exceeding 60 days. In our view, not only would this change serve to protect investors as it would reduce risk but also it would be more consistent with international industry standards and the standards imposed by credit rating agencies.

Finally, we believe the CSA should require periodic stress testing of money market fund portfolios and monthly public reporting of the holdings so that risk can better be assessed and the portfolios become more transparent.

Part 11 Amendments

As you are aware, mutual funds are not required to have principal distributors. However, mutual funds and their managers are subject to Part 11 of NI 81-102 and, where there is no principal distributor, such provisions apply to the manager as well. Accordingly, we believe that it should be made clear that the amendments to sections 11.1, 11.2 and 11.4 also apply to mutual fund managers where there is no principal distributor. In our case, we offer investment products other than mutual funds subject to NI 81-102, yet we approach the collection and disbursement of client monies the same way as we do for our mutual funds. It would be much easier administratively if separate trust accounts were not required for investment products not subject to NI 81-102. We do not believe the difference between our situation and that faced by the dealers is materially different. Similarly, the amendment to subsection 11.4(1), if applied to mutual fund manufacturers, would also simplify the administrative burden of administering interest on these accounts, especially for large fund manufacturers.

We note that these suggestions may not be required due to the previous interpretation that the principal distributor provisions apply to managers; if that is the view of the CSA, we would respectfully request that it be expressed as part of NI 81-102, its Companion Policy or in a written notice.

Part 15 Amendments

We agree with the Proposed Amendment to subsection 15.3(4) and believe that clarity on the use of ratings and rankings is welcome. We believe it would be appropriate and desirable, however, to include some commentary on this provision in the Companion Policy. Our concerns relate specifically to s.15.3(4)(e)(vi) and (vii).

With respect to (vi), which requires disclosure of the key elements of the methodology used by the rating/ranking organization to determine the rating or ranking of the mutual fund, the key elements of a methodology alone do not provide much meaningful information to an investor. For this to be meaningful to an investor, they would also require a summary of how those elements are used (i.e. an investor might struggle to understand a statement that says the rating is based on risk-adjusted returns). The addition of a summary, however, would tend to make a disclaimer lengthy and the reality is that an actual or potential investor in a fund will not read a lengthy disclaimer. We believe the same result is achieved with a reference (or, in a live document, a link) to the specific page of the rating organization's website where the methodology is discussed. We would recommend that the link be displayed prominently, outside of the standard disclaimer and close in proximity to where the rating is first used in the sales communication.

With respect to (vii), which requires disclosure relating to the significance of the rating or ranking of the mutual fund, we assume that "significance" is the number of tiers on a scale, but this should be clarified. That is, for a 4 star rated fund to comply with this requirement, presumably the fund manager would have to disclose that the rating scale is one star to five stars and five is the best. However, it is unclear whether the word "significance" also requires disclosure of the fact that (if applicable) the top 10% of funds in a category (measured by the key elements disclosed in (vi)) receive 5 stars, so that a 5 star rating means that the fund has been ranked in the top 10% of its category by that organization. The word "significance" is open to much interpretation and it would be beneficial to investors if all mutual fund sales communications met this requirement based on just one interpretation. It could be confusing to an investor – and even misleading – if one fund manager includes more detail on the significance of a ranking or rating than another fund manager using the same ranking or rating system.

NI 81-101 Amendments

We note that the amendment to subsection (6) of Item 9 in Form 81-101F1 does not address an issue that ought to be addressed and that is, namely, as drafted, if a mutual fund crosses the 10% threshold for an investment in a single portfolio security on the day prior to the date of the prospectus, such must be disclosed in the prospectus to be dated the next day, rather than in the next year's prospectus. From the practical perspective of finalizing that data (which can only be done after the market closes for the day), finalizing a disclosure document, having it approved internally, translated and filed on SEDAR, a delay between the period measured and the filing of the document is highly desirable. By analogy, subsection (1.1), which requires disclosure of holders of 10% of the securities of a mutual fund, requires that such be measured as of a date within 30 days of the date of the simplified prospectus. The 30 day period recognizes the impracticality of making such a change to disclosure as of a date so close to filing the prospectus and inherently recognizes the need to cut off information as at a particular date. We recommend, therefore, that subsection (6) be qualified similarly (i.e. at any time during the 12 month period prior to a date that is within 30 days of the date of the prospectus). Similarly, subsection (7) of Item 9 should also be amended.

In addition, we recommend that the opening paragraph of subsection (6) of Item 9 be further revised to include the italicized words: "other than a government security, a security issued by a clearing corporation, *or a security issued by another mutual fund in which the mutual fund invested pursuant to Section 2.5 of NI 81-102*". As currently drafted, subsection (6) technically requires disclosure of underlying funds for what the Proposed Amendments define as "clone funds" and any other fund of fund where an underlying fund constitutes more than 10% of the net asset value of the top fund. The rationale for the required disclosure for an issuer that constitutes more than 10% of the net asset value of a mutual fund does not apply where that issuer is itself a mutual fund governed by the same (or similar) set of rules.

We question the effectiveness of the Proposed Amendment to subsection (7) of Item 9 in Form 81-101F1 Part B, which requires specific risk disclosure in relation to derivatives usage and short selling. Currently, the provision requires disclosure of the risks associated with securities lending, repurchase and reverse repurchase transactions. Most mutual funds meet this requirement by simply referring the reader of the simplified prospectus back to the general disclosure of risks in Part A of the simplified prospectus (where most mutual funds list and describe all of the risks referred to elsewhere in the prospectus). Based on the length of time this requirement has been in effect, Staff have clearly accepted this approach. In reality, it is no different from the disclosure of any other kind of risk where, typically, the risk is disclosed by name in Part B and the reader is referred back to the description of that risk in Part A. Therefore, it seems to us that subsection (7) does not make sense. Rather than simply removing this provision, however, the CSA has opted to expand it to the use of derivatives for non-hedging purposes and short selling. It seems rather predictable that issuers will simply list those risks by name and refer the reader back to the specific page in Part A. As such, we recommend that subsection (7) be repealed.

We also recommend that the transition provisions be clarified to state that the amendments to Forms 81-101F1 and F2 apply only to simplified prospectuses and annual information forms issued after the effective date of the Proposed Amendments, so that mutual fund managers are clear that they do not have to file amendments to current prospectuses where a particular practice has not changed.

NI 81-106 Amendments

Please clarify the expectations of the CSA for fund managers to meet the requirements of proposed subsection 14.2(8) of NI 81-106, requiring the net asset value of the investment fund to be made available to the public. Specifically, does this require simply that it be made available to anyone who calls and asks for it or are we required to be more proactive in disseminating this information, whether posting it on an internet site or otherwise? We note that the cost of systems changes to post this information daily is likely greater than the benefit to investors of having this information daily, rather than weekly, monthly or quarterly.

B. Suggestions for Additional Amendments

As mentioned at the outset of our letter, we believe that there are additional amendments that the CSA should consider as soon as possible. A thorough review of NI 81-102 is long overdue and many of the items below ought to be addressed sooner rather than later, for the benefit of investors and fund managers. Our suggestions are as follows:

1. Section 1, definition of "government security": This definition should be amended in several respects or, alternatively, exclusions from the concentration restrictions should be added. A number of fund managers have obtained relief in recent years for funds with a global fixed income mandate to exceed the concentration restrictions for investments in non-Canadian and non-U.S. government debt rated AAA up to 35% of net assets and rated AA up to 20% of net assets. There have been a number of variations on this relief as well with respect to balanced funds. We are one of the firms that obtained relief and we struggled during that process to understand why Canada and U.S. government debt should be treated differently from that of other AAA rated countries (Austria, Finland, France, Germany, Netherlands, Sweden, United Kingdom). During the recent financial crisis, for example, there was some uncertainty around U.S. government debt but not around German debt, which also offered better rates of return and might have been more appropriate for certain global mandates. We believe this North American bias ought to be re-examined and all AAA-rated countries ought to be included in the definition of "government security". Furthermore, we believe that the concentration limits on AA rated government debt should be expanded and we believe that at least 20% of net asset value (which is a figure consistent with prior relief) would be appropriate.

2. Section 1, definition of "mutual fund conflict of interest restrictions": This definition should be amended to be consistent, if not identical, with the definition of that term in NI 31-103.

3. Paragraphs 2.3(e), (f) and (h), gold investments: In light of recent relief granted to invest in Gold ETFs, paragraph 2.3(e) should be amended to specifically include Gold ETFs. As the CSA is aware, this has become a more practical way to invest in gold compared with gold bullion or specified derivatives the underlying

interest of which is gold. We also urge the CSA to consider expanding paragraphs 2.3(e), (f) and (h) to include other precious metals beyond gold, such as silver and palladium, consistent with previously granted relief. Finally, in light of recent relief granted regarding investments in leveraged gold ETFs and inverse gold ETFs, among other things, we believe it would be appropriate to codify that relief as well.

4. <u>Clause 2.5(2)(b), prohibition on multi-tier fund of funds</u>: We note that the CSA has granted relief from this provision in some circumstances. We submit that the rationale of this prohibition relates to layering of fees and expenses. However, duplication of fees and expenses is specifically prohibited by clauses (d), (e) and (f) of subsection 2.5(2). As such, it is not clear what the harm of multi-layering is. On the other hand, multi-layered structures may be beneficial to investors as it ensures that all assets to be invested pursuant to a particular strategy will be invested together. This could yield trading and other operating efficiencies for the fund, which ultimately benefit investors in the fund.

5. <u>Section 2.8, use of derivatives for non-hedging purposes</u>: The CSA should amend these provisions in light of changes in market practice relating to requirements for collateral and the requirements of the Dodd-Frank financial reform legislation in the U.S. Two issues need to be addressed for derivatives use to be more efficient for mutual funds and to ensure the funds are treated fairly commercially. First, it is unclear under NI 81-102 whether a mutual fund can post cash as collateral under a specified derivative contract. The more popular view is that a fund cannot. Collateral under an ISDA agreement is typically governed by a Credit Support Annex under which the parties ascribe a value to various types of collateral. A party posting collateral will often not get full credit for collateral in a form other than cash. Some counterparties will give full credit for short-term Canadian or U.S. government debt, but a significant number ascribe a value of 99% to this debt (so if you need to post $99 of collateral, you really need to provide $100 of the debt). As terms to maturity lengthen and as the debt gets further from being federal government debt, these discounts increase. This causes a greater amount of assets to be inaccessible to the fund. If funds could post cash, then funds would be able to invest a greater proportion of their assets when using derivatives, for the benefit of their investors. Second, the prevailing view is that fund net assets used as cash cover cannot also be used to post collateral under an ISDA agreement. As a result, when a fund is in a period where payments under a specified derivative would be required, it would need cash cover for that amount under NI 81-102 and it would likely have to post collateral with the counterparty under its Credit Support Annex. The effect of this is that the payment obligation is double-secured, at an obvious cost to the unitholders of the fund. This also makes the use of derivatives uneconomic in some respects and it is not clear that this result is desirable or intended. There are many reasons why a fund manager might want to get exposure through derivatives (such as a lack of availability of certain types of debt required by the fund to meet its fundamental investment objective) and these benefit investors in the fund. We note that the use of Credit Support Annexes has increased since the 2008 financial crisis and implementation of derivatives rules under the Dodd-Frank legislation is expected to result in even greater use of Credit Support Annexes.

6. <u>Section 2.12, securities lending limits and ancillary provisions</u>: We note the Proposed Amendments to s.2.5 to change "RSP clone fund" to "clone fund" and the impact thereof. The "clone funds" in that case are often "capital yield" versions of fixed income mutual fund trusts. Typically, in a capital yield structure, the fund buys a basket of equities ("Equity Basket") and sells them forward to a counterparty. As collateral for its obligations under the forward, the fund pledges the Equity Basket to the counterparty. The counterparty shorts the stocks contained in the Equity Basket to hedge its exposure to the equities. To short the stocks, the counterparty is required to borrow the stocks in the securities lending market. The cost of borrowing is typically charged back to the mutual fund. In this situation, it is desirable for the fund to lend its Equity Basket to the counterparty rather than the counterparty borrowing the stocks on the open market as (a) that saves the fund from incurring the borrowing costs passed on from the counterparty and (b) the fund has no other use for the Equity Basket, beyond the forward contract. Clearly, this arrangement is of benefit to securityholders of the fund since there is a clear and direct savings without any additional risk (since the Equity Basket is already pledged to the counterparty). Thus, the counterparty would hold the Equity Basket as collateral at the same time as borrowing it to enter into a short position. While the counterparty holds the Equity Basket as collateral, it is not possible for the custodian to act as agent for securities lending purposes. Further in order to engage in securities lending, the Equity Basket which is being held by the counterparty as collateral needs to be released, the counterparty will only agree to do so if is provided a security interest over the collateral received by the fund in respect of the securities lending transaction. The CSA has granted relief in these circumstances for a fund to engage in securities lending of 100%, permitting the agent in the securities lending arrangement to be someone other than the custodian or sub-custodian and permitting someone other than the custodian or sub-custodian to hold the collateral received from the securities lending transaction and permitting the disposal of any non-cash collateral. Accordingly, s.2.12(1)1, s.2.12(1)2, s.2.12(1)12, s.2.12(3), s.2.15(3), s.2.16 and s.6.8(5) should be amended accordingly.

7. <u>Clause 5.6(1)(b), "qualifying exchange" requirement for a pre-approved fund merger</u>: We propose removal of this requirement for pre-approved mutual fund mergers. Under a qualifying exchange, a continuing fund acquires the portfolio securities of a terminating fund at the cost to the terminating fund of those securities. The result is that a capital gain may be imported into the continuing fund. In many cases, a fund merger is not required to be voted on investors in a continuing fund so, in many cases, the investors in a terminating fund have the sole say in whether capital gains should be spread among another, distinct group of investors. Given that in all circumstances terminating fund investors or their IRC will be asked to approve a merger but the same is not always true of continuing fund investors, the "default" should be that the transaction is carried out on a taxable basis and the terminating fund investors can make their decision on that basis. (Presumably, many terminating funds are in a loss position and, therefore, a taxable merger is likely beneficial or neutral to terminating fund investors.) We note that it would not be difficult for an IRC to conclude that a tax deferred merger remains beneficial for a continuing fund notwithstanding the capital gains impact to the extent that the impact is not too big and there are tangible benefits to the continuing fund from the merger.

8. <u>Clause 5.6(1)(e), requirement for securityholder votes to approve mergers</u>: Subsection 5.6(1) sets out the conditions of a pre-approved merger and clause (e) requires that such transactions be approved by securityholder votes. Subsection 5.3(2) then sets out the circumstances under which a securityholder vote is not required. However, the interplay of the two sections is technically deficient because, if one avails itself of subsection 5.3(2), then it cannot possibly meet the requirement in clause 5.6(1)(e). Accordingly, we recommend that clause (e) be revised to either add a subclause (iii) stating "by the independent review committee of the mutual fund under subsection 5.3(2)" or by revising the words prior to subclauses (i) and (ii) to state "unless subsection 5.3(2) applies, the transaction is approved".

9. <u>Subclause 5.6(1)(f)(ii), material to be included in a mailing to investors to approve a fund merger</u>: Subsection 5.6(1)(f)(ii) requires that the simplified prospectus of the continuing fund, as well as its most recently filed annual and interim financial statements, be sent to investors in the terminating fund. It has been standard relief for many years now to permit a tailored prospectus that only includes the continuing fund to be sent to securityholders of the terminating fund, regardless of whether the continuing fund is a part of a much larger prospectus that includes many funds. Further, such relief permits the manager to not deliver the financial statements, subject to disclosure in the management information circular that those statements are available through SEDAR or through the manager. We believe that this particular exemption should be codified for the reasons discussed at the beginning of this letter.

10. <u>Clause 5.7(1)(b), information required to be submitted with a merger application</u>: This clause should be amended to specifically require that a draft information circular be submitted with a merger application. Further, the Companion Policy should state that, in considering a merger application, Staff may require changes to the information circular as a condition of approval. We raise this point because for the first 5-7 years of NI 81-102, our experience was that Staff did not make this request and, consequently, a merger application would be filed several weeks prior to the merger. In the last couple of years, we notice that Staff has started to be more active as regards information circulars for mergers that require regulatory approval. While we do not have any issue with Staff getting more active in this space, we do believe that this is a significant change in practice and significantly alters the timing of a fund manager for drafting an information circular and for filing an approval application. We would have expected the CSA to issue a Staff Notice when this practice was changed, so as to alert fund managers to alter their timelines, but as that has not occurred, we believe the same result can be achieved with the amendments suggested.

11. <u>Subsection 9.2(a), rejection of purchase orders</u>: This subsection is worded differently from s.10.2(6) regarding the rejection of redemption orders in that the former refers to "no later than one business day after" and the latter refers to "no later than the close of business on the business day after receipt…" We have noted that some market participants interpret these differently (for example 4 p.m. under s.9.2(a) and 6:30 p.m. under s.10.2(6)) whereas some market participants interpret these the same (6:30 p.m. in both cases). We believe that uniformity in these types of procedural issues is highly desirable for all market participants. We would suggest the formulation in s.10.2(6).

12. Clauses 9.4(4)(a) and 10.5(1)(a), forced redemptions and purchases: We recommend that the inconsistency between s.10.5(1)(a) and s.9.4(4)(a) be removed. These sections require reversal of redemptions and purchases, respectively. In the case of redemptions, the provision effectively gives the redeemer 10 days to meet all necessary requirements and if those are not met, then the mutual fund securities are re-issued on that 10th day. In the case of purchases, the purchaser is given 3 days to settle and if the purchaser fails to do so, then the mutual fund securities are redeemed on the 4th day. We do not understand why the forced redemption would occur on the day following the settlement period and the forced purchase would occur on the final day of the settlement period. We believe that it would be preferable for both transactions to occur on the next business day following the end of the settlement period.

13. Subsections 11.1(3), 11.2(3) and 11.3, prohibition on lapping: We recommend that, in limited circumstances, lapping be permitted by a mutual fund and that the fund manager be permitted to temporarily fund a trust account in the circumstances described below. We are concerned with the situation where a large investment is made into a fund on T but does not settle until T+3. Under NI 81-102, the fund itself cannot invest the new cash until T+4, yet the large investor is given the net asset value per unit on T. In a rising market, this could cause severe dilution to the other investors in the fund. In those circumstances, we believe the portfolio manager should be entitled to trade on the basis of the investment made on T, rather than on the basis of the T+3 settlement.

    This situation is further exacerbated with “clone funds” and other fund of funds where an investor purchases on T but the cash only becomes available for ultimate investment in securities by the underlying fund 6 days later as the top fund needs to settle the trade T + 3 and then invest in the bottom fund which then requires a further T + 3 to settle. The risk of cancellation of a trade by a top fund in the case of fund of funds or a counterparty in the case of clone funds is highly unlikely as in the case of fund of funds, the top fund and bottom funds are usually affiliated and the top fund has already received the cash which it needs to invest in the bottom fund and in the case of clone funds, the counterparty is seeking to hedge its exposure. We add that the prohibition on lapping also results in a discrepancy in the performance between a top fund and a bottom fund which is generally not desirable in “clone funds”.

    We understand the concern with lapping in that a trade may not settle and then the fund itself would be in a liability predicament; however, we would propose to limit the circumstances where lapping is permitted. First, in any circumstance where lapping occurs, the manager should be required to guarantee the amount “lapped” to the fund so that if the trade is subsequently cancelled, the manager and not the fund would bear the impact. Second, lapping would only be permitted where (a) an investor seeks to subscribe for units having a value greater than 10% of the net asset value of the fund; (b) the investor is a top fund that is affiliated to the bottom fund; or (c) the investor is hedging its exposure under a clone fund structure. We note that where these types of investments occur, it is extremely rare for a trade to be cancelled (in fact, we are aware of no situations where this has occurred). We further note that lapping is permitted in the United States and there have been no reports of abuse in respect thereof.

We trust that you have found our comments helpful. We appreciate the opportunity to comment on the Proposed Amendments and would be pleased to discuss our comments with you in person at any time.

Yours very truly,

Invesco Trimark Ltd.

Eric J. Adelson
Senior Vice President, Legal