March 5, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Series Commission of New Brunswick
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 John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1903 Box 55
Toronto, Ontario M5H 3S8

email:jstevenson@osc.gov.on.ca

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

email: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: Proposed Amendment's to National Instrument 31-103*Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103") and Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*(the "Companion Policy")

This letter is being written on behalf of the Canadian section ("AIMA Canada") of the Alternative Investment Management Association ("AIMA") and its members to provide our comments to you on the legislation referred to above.

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 1,300 corporate members in more than 50 countries, including many leading investment managers, professional advisers and institutional investors. AIMA Canada, established in 2003, now has more than 100 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 provide leadership to the industry and be its pre-eminent voice; and to develop sound practices, enhance industry transparency and education, and to liaise with the wider financial community, institutional investors, the media, regulators, governments and other policy makers.

The majority of AIMA Canada members are managers of hedge funds and fund of funds. Most are small businesses with fewer than 20 employees and $50 million or less in assets under management. The majority of assets under management are from high net worth individuals and are typically invested in pooled funds managed by the member. Investments in these pooled funds are sold under exemptions from the prospectus requirements, mainly the accredited investor and minimum amount exemptions. Manager members also have multiple registrations with the securities regulatory authorities: as Portfolio Managers ("PMs"), Investment Fund Managers ("IFMs") and in many cases as Exempt Market Dealers ("EMDs"). AIMA Canada's membership also includes accountancy and law firms with practices focused on the alternative investments sector.

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

Section 8.5 – Dealer Registration Exemption – Trades through or to a Registered Dealer

We acknowledge and appreciate the efforts of the staff of the Canadian Securities regulators ("CSA") to clarify the language in section 8.5 of NI 31-103 and we agree that the word "solely", which was confusing, should be removed.

However, we find the proposed language in section 8.5 of NI 31-103 and section 8.5 of the Companion Policy to be problematic. In order for the exemption from dealer registration in section 8.5(a) of NI 31-103, to be relied upon, the entity

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seeking to rely on the exemption must have first undertaken or propose to undertake some activity in Canada that triggers or will trigger the dealer registration requirement. Given the prohibition on soliciting or directly contacting potential investors, it is unclear what that activity could be other than, as suggested in the proposed language in the Companion Policy, working with issuers or appropriately registered dealers, or as the Companion Policy currently indicates, contacting a registered dealer in Canada to secure its services for a transaction. It is our view that these activities are far too remote to constitute a trade or act in furtherance of a trade. In addition, we note that the proposed language regarding working with issuers is inconsistent with the guidance related to "merger and acquisition specialists" in paragraph (d) under the heading Business trigger examples in the Companion Policy. We urge the staff of the CSA to remove the paragraph in the Companion Policy preceding the heading "Cross-border trades (jitneys)", which in our view, is inconsistent with the application of the "in the business" trigger to the dealer registration requirement.

In addition, the proposed language removes the availability of the exemption where the person seeking to rely on the exemption solicits or contacts the potential investor, but does not remove the exemption which the potential investor contacts the person seeking to rely on the exemption. We do note that the guidance proposed to be added to Companion Policy (under "Cross -border trades (jitneys)) would remove exemption where there is direct contact between the person relying on the exemption and the purchaser, irrespective of who does the initiating and is inconsistent with the proposed language in section 8.5 of NI 31-103. If a reverse solicitation concept is intended, it is our view that it should be expressly stated. The reverse solicitation concept is already applicable to the trigger for investment fund manager registration as set out in Part 3 of the Companion Policy to Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers*. We also observe that "solicit" can be very broadly interpreted, and at its broadest interpretation, would likely include any contact of a potential investor by a fund manager. Consequently, the distinction between "solicit" and "contact" is unclear.

This exemption is frequently utilized by non-Canadian investment fund managers seeking to offer non-Canadian investment funds to large Canadian investors, including pension funds and other institutional investors. Many of the non-Canadian investment fund managers are members of AIMA. Generally, these managers have complied with the existing exemption in section 8.5 by either (i) requiring any potential Canadian investor to source and identify to the manager the Canadian registered dealer who will act as dealer for the benefit of the investor or (ii) retaining the services of a Canadian registered dealer on a stand-by basis, to act from time to time as dealer for the benefit of Canadian investors who do not choose to utilize a Canadian registered dealer with whom they

already have a relationship. In each case, the Canadian registered dealer is expected to treat the Canadian investor as its client and discharge applicable know-your-product, know-your-client, investment suitability and Federal anti-money laundering obligations in an appropriate manner. In these circumstances, the manager may have direct contact with the investor, with the involvement of a dealer.

In our view, given the currently utilized approaches described above, the current language provides appropriate protection to investors and fosters fair and efficient capital markets. We make the following observations in support of this view:

(a) Canadian investors resident in Ontario, Quebec and Newfoundland and Labrador that invest in non-Canadian investment funds are "permitted clients" (as a consequence of the application of the investment fund manager registration requirement in Ontario, Quebec and Newfoundland and Labrador) and have a very high level of investing sophistication and have little need for the protections afforded by the involvement of a dealer

(b) non-Canadian investment fund managers willing to incur the cost of complying with Canadian legislation in order to accept Canadian investors are generally well established firms which manage very large investment funds with very large minimum investments (in the range of $1 million to 5 million) which in practice limits investors to those who qualify as "permitted clients";

(c) in order to discharge their fiduciary obligations (in the case of pension funds and other regulated entities) or otherwise permit investors in non-Canadian investment funds to complete appropriate due diligence, investors need direct contact with the fund manager or portfolio adviser; and

(d) permitted client investors in non-Canadian investment funds regularly waive know-your-client and investment suitability requirements of the dealer involved in the investment, as they often initiative the contact with the investment fund and/or have conducted their own diligence on the investment fund and related parties (including the portfolio adviser).

While we recognize that this exemption may be utilized in other circumstances, in the circumstances of non-Canadian investment fund managers making non-Canadian investment funds available to Canadian institutional, pension fund and other permitted client investors, it is our view that prohibiting any contact between potential Canadian investors and the entity wanting to rely on the exemption (i.e. the issuer/investment fund manager or portfolio adviser) does not foster fair and efficient capital markets and indeed will result these non-Canadian investment funds no longer being available to Canadian investors, as

the Canadian permitted client investors may be unable to invest if they are not permitted to do their own due diligence. We urge the staff of the CSA to consider alternative approaches, such as the following alternative to the proposed language in section 8.5(a):

> The trade is made through a registered dealer, if the dealer is registered in a category that permits the trade unless, in furtherance of the trade, the person or company seeking the exemption solicits or contacts directly any purchaser or prospective purchaser in relation to the trade that is not a permitted client.

It is our view that this alternative strikes an appropriate balance between the CSA's dual mandates of providing protection to investors from unfair, improper or fraudulent practices and fostering fair and efficient capital markets and confidence in capital markets.

We appreciate the opportunity to provide the CSA with our views on NI 31-103. Please do not hesitate to contact the members of AIMA set out below with any comments or questions you might have.

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Yours truly,

ALTERNATIVE INVESTMENT MANAGEMENT ASSOCIATION

By:

Ian Pember
On behalf of AIMA Canada and the Legal & Finance Committee