December 22, 2016

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 Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut.

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West,
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Comments@osc.gov.on.ca

Dear Sirs/Mesdames:

Re: Canadian Securities Administrators ("CSA") Notice and Request for Comment dated September 22, 2016 - Modernization of Investment Fund Product Regulation – Alternative Funds ("the Proposed Amendments")

This comment letter is submitted on behalf of Sun Life Global Investments (Canada) Inc., a member of the Sun Life Financial group of companies, to provide our comments on the legislative amendments referred to above.

About Sun Life Financial

Sun Life Financial ("**SLF**") is one of Canada's largest financial services organizations. It provides life and health insurance products, asset management services and group benefits to over 37 million clients worldwide. As of September 30, 2016 it has over $164 billion in corporate assets and over $908 billion in assets under administration. The Sun Life Financial group of companies includes MFS Investment

Management, one of the largest investment management companies in the United States with over $578 billion under management as of September 30, 2016 and SLF is also a major participant in the institutional asset management space through Sun Life Investment Management[1] with over $51 billion under management. Sun Life Global Investments (Canada) Inc. ("**SLGI**" or "**We**") is one of Canada's fastest growing investment management companies with $15 billion in asset under management in 67 retail and 41 institutional funds as of September 30, 2016. In May of 2016 SLGI launched its first "commodity pool" under NI 81-104, the Sun Life Multi-Strategy Target Return Fund.

A. General Comments

We are providing these comments based upon our experience with NI 81-104 and our commodity pool, the Sun Life Multi-Strategy Target Return Fund. Therefore, our comments are primarily concerned with how the Proposed Amendments would affect "alternative funds". Although we recognize that many of our comments may also impact non-redeemable investment funds, we will not be commenting on those questions that solely relate to non-redeemable investment funds.

We wish to note that we are generally supportive of the Proposed Amendments, subject to our comments below.

B. Definition of "Alternative Fund"

<u>CSA Questions</u>

1) Under the Proposed Amendments, we are seeking to replace the term "commodity pool" with "alternative fund" in NI 81-102. We seek feedback on whether the term "alternative fund" best reflects the funds that are to be subject to the Proposed Amendments. If not, please propose other terms that may better reflect these types of funds. For example, would the term "nonconventional mutual fund" better reflect these types of funds?

We agree with the proposal to replace the term "commodity pool" with "alternative fund", and the rationale stated in the Proposed Amendments. In particular we believe the term "alternative fund" is broad enough to capture the variety of different investment strategies investment funds could be expected to take advantage of if the Proposed Amendments are enacted. In addition, we find the current term "commodity pool" to be an inaccurate and confusing term for the kinds of funds that are currently governed by NI 81-104. However, although this is not explicitly proposed in the Proposed Amendments, we are not in favour of referring to existing NI 81-102 mutual funds as "conventional

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[1] The Sun Life Investment Management group of institutional investment management companies comprises Bentall Kennedy Group in North America, Prime Advisors, Inc. and Ryan Labs Asset Management Inc. in the United States, and Sun Life Institutional Investments (Canada) Inc. in Canada. These operations have combined third-party assets under management of $51.1 billion, as of September 30, 2016. Sun Life Investment Management is supported by the investment division of Sun Life Assurance Company of Canada that manages $146 billion in assets under management for the Sun Life Financial group of companies as of September 30, 2016.

mutual funds" and instead would prefer that they continue to be referred to as "mutual funds". We feel that using the term "conventional mutual funds" may stigmatize mutual funds in a negative way. We suggest that referring to the different kinds of investment funds to be governed by NI 81-102 as "mutual funds", "alternative funds" and "non-redeemable investment funds" is sufficient to differentiate them in the minds of investors.

C. Investment Restrictions

<u>CSA Questions</u>

Asset Classes

2) We are seeking feedback on whether there are particular asset classes common under typical "alternative" investment strategies, but have not been contemplated for alternative funds under the Proposed Amendments, that we should be considering, and why.

We do not have any comments on this question, however we are supportive of the comments made in response to this question in IFIC's comment letter

Concentration

3) We are proposing to raise the concentration limit for alternative funds to 20% of NAV at the time of purchase, meaning the limit must be observed only at the time of purchasing additional securities of an issuer. Should we also consider introducing an absolute upper limit or "hard cap" on concentration, which would require a fund to begin divesting its holdings of an issuer if the hard cap is breached, even passively, which is similar to the approach taken with illiquid assets under NI 81-102? Please explain why or why not.

We are supportive of the proposal to raise the concentration limit for alternative funds to 20%. However, we do not believe that a hard cap is necessary.

Illiquid Assets

4) We are not proposing to raise the illiquid asset limits for alternative funds under the Proposed Amendments. Are there strategies commonly used by alternative funds for which a higher illiquid asset investment threshold would be appropriate? Please be specific.

We believe that alternative funds should have a higher limit for illiquid assets than mutual funds. We suggest that, similar to the proposed rule for the concentration limit, alternative funds be permitted to have the same illiquid asset limit as non-redeemable investment funds, a 20% limit at time of purchase with a 25% hard cap. Alternative funds are intended to have greater flexibility to pursue different investment strategies than mutual funds, and permitting a higher limit for illiquid assets would grant this flexibility, while also provide greater consistency within the rules between alternative funds and non-redeemable investment funds.

5) Should we consider how frequently an alternative fund accepts redemptions in considering an appropriate illiquid asset limit? If so, please be specific. We also seek feedback regarding whether any specific measures to mitigate the liquidity risk should be considered in those cases.

We do not have any specific comments on this question, however we are supportive of the comments made in response to this question in IFIC's comment letter.

6) We are also proposing to cap the amount of illiquid assets held by a non-redeemable investment fund, at 20% of NAV at the time of purchase, with a hard cap of 25% of NAV. We seek feedback on whether this limit is appropriate for most nonredeemable investment funds. In particular, we seek feedback on whether there are any specific types or categories of nonredeemable investment funds, or strategies employed by those funds, that may be particularly impacted by this proposed restriction and what a more appropriate limit, or provisions governing investment in illiquid assets might be in those circumstances. In particular, we seek comments relating to non-redeemable investment funds which may, by design or structure, have a significant proportion of illiquid assets, such as 'labour sponsored or venture capital funds' (as that term is defined in NI 81-106) or 'pooled MIEs' (as that term was defined in CSA Staff Notice 31-323 Guidance Relating to the Registration Obligations of Mortgage Investment Entities).

We do not have any comments on this question as it relates solely to non-redeemable investment funds, but note that it would match with our response to question 4, above.

7) Although non-redeemable investment funds typically have a feature allowing securities to be redeemable at NAV once a year, we also seek feedback on whether a different limit on illiquid assets should apply in circumstances where a nonredeemable investment fund does not allow securities to be redeemed at NAV.

We do not have any comments on this question as it relates solely to non-redeemable investment funds.

Borrowing

8) Should alternative funds and non-redeemable investment funds be permitted to borrow from entities other than those that meet the definition of a custodian for investment fund assets in Canada? Will this requirement unduly limit the access to borrowing for investment funds? If so, please explain why.

Generally, we do not believe that investors are well served through frequent and consistent borrowing for the purposes of generating investment returns outside of specific and limited cases, primarily concerning illiquid assets, such as investing in commercial real estate or infrastructure. In cases such as these, the ability to borrow on a long term basis for the purpose of providing an investment return might be suitable, however it is important that the risks are clearly disclosed to underlying investors.

In regards to the question concerning the source of cash borrowing, we would urge the CSA to consider a broader range of market participants as suitable lenders. We suggest that in addition to entities that meet the definition of section 6.2 in NI 81-102, the CSA also permit lenders to be entities that qualify as a sub-custodian for assets held outside of Canada in section 6.3 of NI 81-102. We would argue that broadening the available sources of lending in the market would likely lower the costs to the funds by increasing competition and likewise spread the counterparty risk among those market participants that are willing to participate. If the CSA determines that using the definition in section 6.3 to determine permitted lenders is unsuitable, we suggest that the criteria contained in section 6.3 can be narrowed geographically to those entities organized and regulated in countries of the European Economic Area, the G7 countries and Australia and New Zealand.

Total Leverage Limit

9) Are there specific types of funds, or strategies currently employed by commodity pools or non-redeemable investment funds that will be particularly impacted by the proposed 3 times leverage limit? Please be specific.

While we applaud the goal of the CSA to improve investor protection from inappropriate levels of risk, we believe the proposed exposure limit of 3 times leverage, is too low and will restrict the ability of current and future alternative funds to achieve their objectives through the use of derivatives. In particular, we believe the proposed limit will negatively affect those alternative funds that use derivatives seeking to limit volatility or hedge against different types of risk. We do not believe using derivatives to gain exposure to certain asset classes inherently increases the risk of a fund since derivatives and their underlying assets can display similar return and risk characteristics. With proper risk controls in place, using derivatives to gain exposure can have certain benefits, as listed below, and therefore, alternative funds that use derivatives in this manner should not be penalized compared to those funds that use derivatives as a hedging tool in a traditional sense. Some of the benefits of using derivatives to gain exposure compared to the underlying assets are:

1. Derivatives may allow investment funds to gain exposures that the underlying assets cannot provide, for example replicating a bond index. As a result, these funds may provide better diversification than traditional balanced portfolios, especially during stressed market conditions when volatility of underlying assets, such as stocks and bonds, tends to go up simultaneously.
2. Derivatives may offer better liquidity than the underlying assets. Regulatory changes in the banking industry since the financial crisis have reduced the number and scale of market makers. Better liquidity provided by derivatives allows fund managers to increase and decrease exposure more quickly, which is critical for risk management purposes.
3. There are certain asset classes, such as foreign exchange, where the bulk of the market is derivatives based.

As a result of these benefits, we suggest that rather than imposing a single limit on the collective leverage exposure of cash borrowing, short-selling and derivatives, the CSA considers taking a broader approach to managing risk by allowing alternative funds to manage and disclose their risk by using rules similar to the Value at Risk ("VaR") model found in the European UCITS Framework. The UCITS Framework is the Guidelines on Risk Measurement and the Calculation of Global Exposure and

Counterparty Risk for UCITS of the European Securities and Markets Authority and the VaR approach is a measure of the maximum potential loss that an investment portfolio may suffer due to market risk, rather than the use of leverage. More specifically, the VaR approach measures the maximum potential loss at a given confidence level, or probability, over a specific time period under normal market conditions. For example, if the VaR (based on a one month, 99% confidence level) of a fund equals $4 million, this means that, under normal market conditions, there is a 1% probability that the value of the Fund's portfolio could decrease by $4 million or more during one month. Under the VaR Model as prescribed by the UCITS Framework, a fund's VaR cannot be greater than 20% of the fund's NAV irrespective of the portfolio assets held in the Fund and the amount of leverage employed by the Fund Additional controls can also be placed on this approach, such as requiring back testing to further strengthen the risk management process. By assessing risk based upon the potential loss of the portfolio without consideration of the underlying assets, the VaR method would allow alternative funds the flexibility to invest in different types of assets, including derivatives, in a way that best assists them in achieving its investment objectives, without exposing the alternative fund to too much risk.

We suggest that without the flexibility to deploy derivatives using the VaR model, there may be unintended negative impacts to investors of alternative funds. These unintended consequences may include alternative funds increasing the concentration of assets in long-only strategies that are increasingly susceptible to market volatility, and therefore may be more susceptible to suffering negative total returns.

It is for the reasons above, we believe that the proposed restriction of 300% leverage is too restrictive, and this limit combined with the manner in which it is calculated, may reduce innovation in the alternative fund market and may prevent investors from achieving their desired investment outcomes. Instead, as mentioned above, we suggest that utilizing VaR based risk controls instead of having a hard limit on leverage would be a better approach. However, despite suggesting that a VaR based risk management approach be adopted, we do not believe the sum of notionals concept needs to be eliminated entirely. We agree that the sum of notionals concept is relatively simple to understand, therefore we suggest that instead of representing a hard limit on total leverage, the CSA require alternative funds to disclose, based on a sum of notionals calculation, the maximum *expected* total leverage exposure (cash borrowing, short-selling and derivatives) an investment fund manager intends for an alternative fund. Under this approach the sum of notionals calculation would not constitute a limit on leverage exposure, instead it would disclose to investors the manager's expectations regarding leverage. The CSA could consider including a requirement that the manager not exceed the disclosed level of leverage in the normal course of management, and higher levels of leverage, if they occur, would only occur for short periods of time.

We believe that the sum of notionals disclosure coupled with the VaR disclosure would adequately inform investors of the levels of risk and overall leverage an alternative fund would be exposed to, while the VaR method would force investment fund managers to limit risk exposure across all asset classes in their alternative funds.

10) The method for calculating total leverage proposed under the Proposed Amendments contemplates measuring the aggregate notional amount under a fund's use of specified derivatives. Should we consider allowing a fund to include offsetting or hedging transactions to reduce its calculated leveraged *exposure? Should we exclude certain types of specified derivatives that generally are not expected to help create leverage? If so, does the current definition of "hedging" adequately describe the types of transactions that can reasonably be seen as reducing a fund's net exposure to leverage?*

We do not believe that the sum of notionals calculation, as proposed under the Proposed Amendments, accurately reflects the risk exposure to a fund, and as we describe elsewhere in this letter, is likely counterproductive in informing investors of the actual levels of risk funds are exposed to by the use of leverage. If the CSA wishes to have a total leveraged exposure limit similar to the Proposed Amendments, we strongly believe that in order to better disclose the true levels of risk exposure due to leverage, the calculation should permit offsetting and exclude specified derivatives for hedging purposes. Not only are these transactions intended to reduce a fund's overall risk exposure, but keeping the calculation as it is currently proposed, creates an inconsistency between mutual funds and alternative funds. This inconsistency will arise because mutual funds are permitted unlimited hedging exposure, but alternative funds (which are supposed to be permitted greater access to derivatives) would be constrained in using hedging transactions as a result of the leverage calculation.

Our comments in response to questions 9 and 11 are applicable here as well.

11) We note that the proposed leverage calculation method has its limits and its applicability through different type of derivatives transactions may vary. We also acknowledge that the notional amount doesn't necessarily act as a measure of the potential risk exposure (e.g. interest rate swaps, credit default swaps) or is not a representative metric of the potential losses (e.g. short position on a futures), from leverage transactions. Are there leverage measurement methods that we should consider, that may better reflect the amount of and potential risk to a fund from leverage? If so, please explain and please consider how such methods would provide investors with a better understanding of the amount of leverage used.

We agree with the CSA that the sum of notionals calculation for derivatives may not be an appropriate measure of risk. Indeed, depending on the circumstances it may well be unhelpful or even misleading to clients as to the true level of risk they are employing in their investments.

We do not believe that a single methodology presently exists that accurately explains fund leverage, and therefore any purely prescriptive approach will unfairly penalize some investment strategies over others. We support the CSA in seeking to highlight to clients where and when leverage is being used and particularly where it can magnify the risks of an investment. However, we believe that the term leverage needs to be clarified. As mentioned in the Proposed Amendments, leverage can be achieved through the use of borrowing cash to reinvest, short selling or via the use of derivatives. We support the proposed cash borrowing and short selling limits as well as the creation of a combined cash borrowing and short selling limit. However, we do not support the creation of a single limit on the total leveraged exposure for alternative funds. We believe that the risks represented by derivatives are distinct enough from cash borrowing and short selling to require a different approach.

We agree that the use of 'leverage' through derivatives should be clearly disclosed to investors and that suitable controls should be in place to measure, monitor and control the use of these financial instruments. When using derivatives, we believe that the establishment of a Risk Management Process ("RMP") is a vital component of controlling the risks and that the RMP should clearly state the mechanisms through which the controls operate, including a clearly stated and explained methodology for calculating leverage achieved through derivatives.

In addressing the question raised in the Proposed Amendments as to where a sum of notionals calculation is less suitable to measuring the risks involved in derivatives, we believe that, the current proposal unfairly penalizes fixed income and FX based derivatives relative to equities based derivatives. For example, on the basis of the proposed sum of notionals calculation a $1million of equity notional has the same leverage as $1million of fixed income or FX notional irrespective of the levels of volatility and risk. In many cases, the risk of fixed income derivatives can be substantially lower than the equivalent level of equities based derivatives based on the inherent risks of the underlying assets. In addition, as noted in the proposal, derivatives can also be sensitive to other factors such as changes in interest rates and foreign exchange rates. These different kinds of derivatives each carry a different exposure to risk, however as previously mentioned, the "sum of notionals" approach will treat them all as the same. As a result, we feel that the approach in the Proposed Amendment may unfairly generate an expectation that the level of risk is the same to the end client regardless of the type of derivative used.

Due to the issues with the assumption of equal risk between different types of derivatives, we suggest that instead of having a limit on total leverage, that a suitable alternative would be to require that alternative funds measure and provide disclosure for broader market risk (including derivatives) using a system similar to the European UCITS Framework and the parameters contained therein to measure a fund's VaR. We suggest that this alternative approach would take into account the risks to an alternative fund's underlying investments from a market risk perspective and while at the same time would grant greater flexibility for the use of derivatives when compared to the total leverage limit found in the Proposed Amendment. At the same time we feel that requiring an alternative fund to disclose its VaR, how it is calculated, and an explanation of the UCITs Framework approach would provide clearer public disclosure to investors on the risks associated with the fund's derivatives and broader exposure to leverage. The UCITS Framework and the VaR model are discussed in greater detail in our response to question 9.

As part of the disclosure concerning the UCITS Framework and VaR, we are supportive of being transparent in disclosing a fund's overall exposure to derivatives. Therefore we suggest that a practical example of how each derivative instrument in the portfolio is being handled should be disclosed in the prospectus for investors to review. Although we feel that the approach described above (UCITS Framework and a practical example) provides clearer disclosure of the leverage of the calculation to the investors in an alternative fund, we understand that this could make it difficult for funds to be compared between providers with different approaches. Therefore, as we mention in our response to Question 9, in addition to requiring disclosure we proposed above, we suggest keeping the "sum of notionals" calculation in the Proposed Amendments representing the investment fund manager's *expected* maximum leverage exposure for the alternative fund, instead of a hard limit for total leverage. Finally, in addition to providing clearer disclosure to investors of the leverage and derivative risks facing an alternative fund, we believe that if our suggested alternative is adopted, complying with these requirements will force managers who wish to offer alternative funds to invest in more sophisticated risk control procedures and compliance oversight, which in turn will provide greater protection for investors.

Interrelated Investment Restrictions

12) We seek feedback on the other Interrelated Investment Restrictions and particularly their impact on non-redeemable investment funds. Are there any identifiable categories of non-redeemable investment funds that may be particularly impacted by any of the Interrelated Investment Restrictions? If so, please explain.

We do not have any comments on this question as it relates solely to non-redeemable investment funds

D. Disclosure

CSA Questions

Fund Facts Disclosure

13) Are there any other changes to the form requirements for Fund Facts, in addition to or instead of those proposed under the Proposed Amendments that should be incorporated for alternative funds in order to more clearly distinguish them from conventional mutual funds? We encourage commenters to consider this question in conjunction with proposals to mandate a summary disclosure document for exchange-traded mutual funds outlined in the CSA Notice and Request for Comment published on June 18, 2015.

As alternative funds are expected to have greater exposure to derivatives and leverage than conventional mutual funds or ETFs, in connection with our earlier suggestion regarding the adoption of a VaR and a sum of notionals calculation representing maximum expected leverage, we suggest that the Fund Facts for alternative funds include a text box permitting a brief description of the expected maximum levels of leverage or types of derivatives expected or permitted within that alternative fund.

14) It is expected that the Fund Facts, and eventually the ETF Facts, will require the risk level of the mutual fund described in that document to be disclosed in accordance with the CSA Risk Classification Methodology (the Methodology) once it comes into effect. In the course of our consultations related to the Methodology, we have indicated our view that standard deviation can be applied to a broad range of fund types (asset class exposures, fund structures, manager strategies, etc.). However, in light of the proposed changes to the investment restrictions that are being contemplated, we seek feedback on the impact the Proposed Amendments would have on the applicability of the Methodology to alternative funds. In particular, given that alternative funds will have broadened access to certain asset classes and investment strategies, we seek feedback on what modifications might need to be made to the Methodology. For example, would the ability of alternative funds to engage in strategies involving leverage require additional factors beyond standard deviation to be taken into account?

We do not have any comments on this question, however we are supportive of the comments made in response to this question in IFIC's comment letter.

Point of Sale

15) We seek feedback from fund managers regarding any specific or unique challenges or expenses that may arise with implementing point of sale disclosure for non-exchange traded alternative funds compared to other mutual funds that have already implemented a point of sale disclosure regime.

We do not have any comments on this question, however we are supportive of the comments made in response to this question in IFIC's comment letter.

E. Transition

<u>CSA Questions</u>

16) We are seeking feedback on the proposed transition periods under the Proposed Amendments and whether they are sufficient to allow existing funds to transition to the updated regulatory regime? Please be specific.

The period required to adjust to the changes will be determined by the final implemented changes and we would encourage the CSA to allow for sufficient time to be provided to allow for the this transition. Specifically, we believe a transition period of at least a year following the publication of final rules would provide sufficient time for existing alternative funds to revise their disclosure documents as necessary within their usual renewal schedule and apply for any necessary relief for any current permitted activities that will be prohibited following implementation.

Conclusion

Thank you for this opportunity to comment on the Proposed Amendments. If you would like to discuss these matters further or have any questions please contact me at 416-979-6496 or at <u>neil.blue@sunlife.com</u>

Sincerely,

Neil Blue

General Counsel, Sun Life Global Investments (Canada) Inc.