27 May 2003

Jane Brindle, Legal Counsel
Alberta Securities Commission
4th Floor
300 5th Avenue S.W.
Calgary, AB T2P 3C4

Re: CSA - Concept Proposal for Uniform Securities Legislation

Dear Ms. Brindle:

The Canadian Advocacy Committee (CAC) of the Association for Investment Management and Research (AIMR)[1] is pleased to respond to the request for comments on the Canadian Securities Administrators Notice and Request for Comment 11-402, *Concept Proposal for Uniform Securities Legislation (USL)*. The CAC represents members of AIMR and its 11 Member Societies and Chapters across Canada. The CAC membership includes portfolio managers and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada.

General Comments

The CAC commends and supports the CSA in its efforts to harmonize the securities regulation system across Canada's provinces and territories. For several years, we have advocated for convergence and harmonization of securities regulation in Canada. Such convergence is needed to promote more efficient capital markets as well as to ensure sufficient investor protection and transparency of market activities.

Although harmonization of provincial securities legislation and oversight would improve the current regulatory system in Canada, we have some concerns about proposed exemptions and variances in the enforcement, including remedies for non-compliance with regulations. We consider the current USL proposal as a "stop-gap" approach to securities regulation in Canada and not a long-term solution.

[1]With headquarters in Charlottesville, VA, and regional offices in Hong Kong and London, the Association for Investment Management and Research® is a non-profit professional organization of over 64,000 financial analysts, portfolio managers, and other investment professionals in 117 countries of which 55,800 are holders of the Chartered Financial Analyst® (CFA®) designation. AIMR's membership also includes 127 affiliated societies and chapters in 46 countries. AIMR is internationally renowned for its rigorous CFA curriculum and examination program, which has more than 102,300 candidates from 148 nations enrolled for the June 2003 exam. Over 8,000 AIMR members live and work in Canada.

The following is a summary of our views on certain issues and areas with the USL proposal:

- **SELF REGULATION** - General support for self-regulation that embodies a clear and principled approach to regulation, with a primary focus on promoting efficient capital markets while placing the interests of clients and investors first.

- **THE REGISTRATION REQUIREMENT** - Support for most of the proposals made in the area of registration requirements, in particular, the harmonization between the SRAs and SROs rules. In particular, we support –
  - The use of the business trigger because it applies to any activity that is a part of a chain of events rather than focusing on only one transaction or trade.
  - The proposed categories of "dealers" and "advisors" (and the definitions of these two categories) since they represent better the business activities of market participants who trade in securities.
  - A streamlined national registration system whereby a registrant would file with their domicile SRA, using one application form to register to do business in other jurisdictions/SRAs.

- **THE PROSPECTUS REQUIREMENT** - Cannot fully embrace the proposed change in the prospectus requirement (i.e., it will not be required) without knowing what the continuous disclosure system will require reporting companies and investment funds to disclose, as well as the required frequency of disclosures and information updates. The proposed change in the prospectus requirement -
  - Should only apply to reporting companies (issuers) that are in good standing with all SRAs and whose securities are actively trading on the secondary markets.
  - Should not be implemented until the integrated continuous disclosure system is operational (all electronic filing systems – SEDAR and SEDI - are working).

- **CONTINUOUS DISCLOSURE REQUIREMENTS** - Strong support for an enhanced disclosure system that requires evergreen, or continuously updated, financial and nonfinancial information of all material and pertinent facts. A single evergreen document that contains –
  - Current information and links (electronically or by hyperlinks) to previous periodic filings together rather than a series of independent updates, which are consolidated quarterly or annually.
  - Reasons for the updates, for example, the nature and timing of the event.
  - Standardized content and format for providing information to facilitate the comparison between reporting companies.

- **INSIDER REPORTING OBLIGATIONS** – Concur with the importance of maintaining the following principles by requiring timely and transparent reporting of insider trades:
  (1) provide the market with information about trades by those who have the best access to information about a reporting issuer;
  (2) instill greater investor confidence in the market; and
  (3) deter insiders from trading on undisclosed material information.

  The current *System for Electronic Disclosure by Insiders (SEDI)* needs to be operational as soon as possible and the timeliness of reporting should be accelerated from 10 days to 2 business days.

- **CIVIL LIABILITY** - Strong support for the proposal that would require similar remedies, relating to civil liabilities, which currently exist for the primary markets (or IPOs) as for the secondary markets. We believe that civil liability is an important element (or integral part) of a continuous and integrated financial reporting system.

- **ENFORCEMENT** - Overall, concerned about whether each SRA would enforce the USL in a consistent way. In particular, we do not agree with the current approach giving each SRA the discretion to determine the amount of penalties.

- **GENERAL PROVISIONS** - Believe that the "Rule Making Authority" provision should be <u>used primarily to promote conversion and harmonization among the SRAs</u> rather than diversion between rules.

Background to the CAC's Comments

We share common interests with the CSA, which are to promote efficient capital markets in Canada while providing sufficient investor protection and full transparency of market activities. The CAC was established by the AIMR Board of Governors as a regional standing committee within AIMR's Advocacy Program, representing the views of investors and investment professionals in Canada. As such, the Committee responds to key regulatory and standard setting initiatives that affect capital markets and participants in Canada's capital markets, including AIMR members. The mandate of the CAC incorporates AIMR Values, Purpose, Vision and Mission, which embodies seven core principles to promote efficient capital markets.

The following core principles are the basis for the CAC's comments in responding to the CSA's USL Proposal:

(1) That there should be reasonable disclosure of information to the capital markets to permit well-informed decision-making is a paramount objective; but the benefits of this disclosure must be weighed against the cost of gathering and reporting the information and the cost of competitive disadvantage unless the result is inadequate information for decision-making.

(2) All markets should be transparent and regulation should operate to this end.

(3) Regulation should be designed and enforced to maintain and enhance market credibility, openness, and investor confidence, thereby helping to lower the cost of capital.

(4) There should not be a two-tiered disclosure system. The same information should be available to all market participants at the same time.

(5) Investors should have a voice in corporate governance.

(6) All markets and market participants should be ethical. They should strive to abide by the principles set forth in the AIMR Code of Ethics and Standards of Professional Conduct; but, at a minimum, they must abide by the International Codes of Ethics and International Standards of Professional Conduct issued by the International Council of Investment Professionals (ICIA).

(7) AIMR members should foster self-regulation of the markets in lieu of government-imposed regulation.

Unified Securities Regulation in Canada

We believe *strongly* that the overarching issue for Canada's capital markets is the disharmony of securities regulation, or the current provincial regulatory system. A regulatory system that consists of multiple jurisdictions is overly burdensome and unnecessarily complex. Moreover, it results in a higher cost of capital for issuers and lower investment returns for investors. Simply put, a regulatory system that is decentralized and lacks uniformity within capital markets interferes with the efficient operation of these capital markets.

Currently, Canada's capital markets represent less than 2% of the global capital markets, a percentage reflective of a downward trend in recent years. To regulate these markets, there are 13 jurisdictions (10 provinces and 3 territories), enforcing different regulations and rules for similar market transactions and activities across Canada. As a result, Canada's capital markets are fragmented and considered too cumbersome to deal in. Thus, Canadian companies seek capital elsewhere.

Changes Needed in Addition To Harmonization

We firmly believe that the regulation of Canada's capital markets must be updated to meet the challenges of promoting efficient capital markets and maintaining adequate investor protection. Such regulations must ensure a level playing field for all market participants, fair dealing in the execution of trades, and transparency of market information. In addition to harmonizing current provincial regulations, the CAC urges the CSA to consider further improvements and streamlining of the securities regulation system in Canada. The British Columbia Securities Commission (BCSC) has recently proposed a regulatory model that redesigns the current system, seeking to minimize the regulatory burden and still maintain adequate investor protection in today's capital markets.

Today, companies are seeking capital from many sources and across national borders in order to obtain the lowest cost of capital. Likewise, investors are seeking to diversify their portfolio risk in order to obtain the highest rate of return. To accommodate these needs, today's capital markets are connected globally through a complex and sophisticated network of multinational banks, broker/dealers, venture capitalists, investment companies, and other financial services companies.

Additionally, technology has played a major role in shaping today's capital markets. In just the past ten years, there have been significant advancements in technology, creating a very dynamic and fast-paced environment in which commodities and securities are traded globally. By the year 2005, all listed securities transactions will be settled within 24 hours under T+1 processing in Canada and the U.S. Furthermore, many companies are posting financial statements and other investor information on their web sites for easy access and timely reporting.

Securities regulations need to reflect the current dynamic and fast-paced environment of the financial markets. Currently, secondary market transactions reflect about 94% of all market activity in Canada, but regulations of market disclosures focus more on initial public offerings, representing 6% of all capital activity. Clearly, change is needed to better meet the needs of market participants.

For example, continuous disclosures of financial and other pertinent information need to be timely, transparent, and free of misrepresentations. Market participants need to be aware of events which are material in nature, such as changes in the financial condition of the company, soon after they occur or are identified. This communication and disclosure must be timely and written in plain language, devoid of boilerplate wording. To ensure consistency and compliance, regulators need to monitor and enforce the requirements for timely, complete, and accurate financial statements and disclosures.

CSA's Proposal to Harmonize Securities Laws

The CAC agrees strongly with the CSA's assessment that efficient and effective securities regulation is a pressing issue. It is essential that there is cooperation and coordination among Canada's provincial and territorial jurisdictions in streamlining and establishing a seamless securities regulatory system. We commend and support the CSA in its efforts to unify Canada's decentralized system of securities legislation, in particular, its promulgation of national instruments over the past years.

The Goals of the USL Project

The goal of the USL Project is to develop expeditiously a uniform securities act (the "Uniform Act") and rules ("Uniform Rules") for adoption by each jurisdiction of Canada. The Uniform Act and Uniform Rules would be word-for-word uniform in each jurisdiction. Since the USL Project is a harmonization initiative, the resulting Uniform Act and Uniform Rules would contain few substantive differences from current securities laws. The USL Project is the top priority of the CSA and is part of a larger framework of regulatory reform. Although the first step is to unify securities legislation, other reforms are needed to ensure the continued fairness and efficiency of Canada's capital markets.

In addition to responding to CSA initiatives to develop national instruments, we have addressed provincial initiatives such as the BCSC's Deregulation Project and the OSC's Draft Report of the Ontario Five Year Review Committee. In our comment letters to the BCSC and OSC, we indicated that (1) uniformity in regulations across Canada is essential and (2) reforms to current regulations are needed to address changes in the way capital markets operate today and to ensure that there is sufficient investor protection. In addition, the CAC plans to respond to the *Wise Persons' Committee* request for comments about the current regulatory system in Canada, addressing such areas as its strengths and weaknesses, enforcement activities, and international competitiveness.

The Structure of Uniform Securities Laws

We believe that the USL, promoting and encouraging harmonization, is a pivotal step towards establishing a national framework for securities regulation. This regulatory framework would facilitate future reforms of regulations; a process that takes currently several years to amend all of the securities acts of Canada due to different legislative timetables.

However, the CAC has concerns with the proposed administrative and procedural provisions, which would still maintain many of the current provincial laws because they cannot be easily harmonized at this time. As a result, we believe there will be inconsistent enforcement and oversight of the USL. Some examples include provisions relating to penalties and other remedies, rule making procedures, and the constitution of securities regulatory authorities ("SRAs").

The CAC questions whether different rules are needed because of unique local markets within Canada. Rather, we believe that these different rules permit variances in markets to occur and persist. Generally, we believe that similar market activities and transactions should be regulated similarly to avoid regulation arbitrage. Therefore, we have concerns about the USL proposal to allow differences and exceptions in a local provincial or territorial rule to persist and perhaps develop over time. Such provisions would only serve to continue the fragmented approach to securities regulation in Canada.

1. SELF-REGULATION

Background:
Many participants in the Canadian securities industry are regulated by self-regulatory organizations ("SROs"). Self-regulation is appropriate since SROs have the skill, expertise and ties to industry to regulate effectively. The functions of Canada's current SROs are, in broad terms, to regulate the activities of their members and to provide market regulation services.

Generally, each jurisdiction that regulates SROs does so in substantially the same way. Securities Acts generally permit or require an SRA to recognize an SRO that is carrying on business in the SRA's jurisdiction. In addition, an SRA has the authority to review any direction, decision, order or ruling made by a recognized entity. An SRA's oversight of a recognized entity generally varies from its oversight of an exempted entity.

Under the USL, the basic framework for the regulation of SROs would remain substantially the same. However, there would be a few modifications to the current regime that are discussed below. In addition, new SROs are likely to emerge as the securities industry evolves. A flexible approach to regulation is therefore imperative.

CAC Response:
Generally, we support self-regulation that embodies a clear and principled approach to regulation with a primary focus on promoting efficient capital markets while placing the interests of clients and investors first. Such regulation should be designed and enforced to maintain and enhance market credibility, openness, and investor confidence, thereby helping to lower the cost of capital. We believe that if participants are self-regulated they tend to buy-in to the purpose and meaning of the regulations and thus, follow them more readily than if the rules are imposed upon them.

We present the AIMR *Code of Conduct* and *Standards of Practice* as an example for addressing these ethical principles in that these standards must be followed by all AIMR members. In particular, Standard IV—*Relationships with and Responsibilities to Clients and Prospects* addresses the requirement that AIMR members must always put the interest of their clients first. AIMR has placed significant emphasis on such standards. CFA candidates cannot successfully complete the CFA program without demonstrating a thorough understanding and application of the AIMR *Code of Conduct* and *Standards of Practice.*

2. THE REGISTRATION REQUIREMENT

Background:
Securities legislation generally requires both securities firms and the individuals working for them to be registered. Firms and individuals must meet a number of requirements to become and remain registered.

There are some inconsistencies among jurisdictions' registration systems. One of the most fundamental inconsistencies is the presence of the universal registration system in Ontario and Newfoundland & Labrador. The universal registration system requires a broader range of entities to register and is quite different from the registration systems in place in other Canadian jurisdictions. Upon implementation of the USL, Ontario and Newfoundland & Labrador would replace the universal registration system with the harmonized USL system. However, these jurisdictions may choose to enact local rules to continue some aspects of the universal registration system.

CAC Response:
The Committee supports most of the proposals made in this area, in particular, the harmonization between the SRA's and SRO's rules. The following are comments to specific issues within this area:

> *Triggering the Registration Requirement* – Generally, the Committee supports the use of the business trigger because it applies to any activity that is part of a chain of events rather than focusing on only one transaction or trade. Current Canadian regulations have two different triggers for determining when an individual or business should be

registered to trade in securities – trade and business. We believe that only one trigger should be used by all SRAs.

Categories of Registration – We support the proposed categories of "dealers" and "advisors" (and the definitions of these two categories) since they represent better the business activities of market participants who trade in securities. Narrowing the categories down to those two would facilitate registration with the various SRAs, thus, reducing the administrative burden on registrants as well as confusion about when an individual or company should be registered.

Advisors – Streamlined National System for Registering Individuals – The Committee supports a streamlined national registration system whereby a registrant would file with their domicile SRA, using one application form to register to do business in other jurisdictions/SRAs. Also, we support the use of an annual registration that follows the calendar year rather than when the registrant first registers with the SRA. Our understanding is that this will be the format starting in 2004.

In addition to the changes to the form and registration period, we believe the entire registration process should be streamlined. For example, the requirements for registration (credentials, background checks, etc.) should be the same across all SRAs. In other words, a registrant checks the boxes for those jurisdictions in which he or she wants to register and remits the necessary fees to cover those registrations.

3. THE PROSPECTUS REQUIREMENT

Background:
A fundamental characteristic of the current system of securities regulation is that issuers must qualify a distribution of securities with a prospectus unless an exemption is available. Under the USL, the existing prospectus trigger in most jurisdictions would be retained and no one would be permitted to distribute securities unless they:

(1) file and obtain a receipt for a prospectus;

(2) comply with alternate requirements of an SRA; or

(3) have an exemption available.

The basic premise is that a prospectus provides sufficient information about an issuer and any offering of securities to allow a potential purchaser to make an investment decision. Therefore, it must contain full, true and plain disclosure.

Presently, securities laws do not mandate that a similar disclosure be provided to those investors seeking to purchase securities on the secondary market. The CSA is pursuing policy initiatives

that would harmonize and strengthen rules for secondary market disclosure. In January 2000, the CSA published for comment a proposed integrated disclosure system ("IDS") that would provide investors with more comprehensive and timely continuous disclosure. The USL would be drafted flexibly so that the move to an integrated disclosure system can be accommodated.

CAC Response:
The CAC believes that regulators would need to shift the focus of oversight and enforcement to secondary market activities for this system to work effectively in ensuring the quality of information is maintained. At present, most SRAs focus compliance and enforcement efforts on the initial offering. Also, the USL proposal would not require a prospectus for secondary (or shelf) offerings under an integrated and continuous disclosure system.

At present, this integrated continuous disclosure system has not been fully defined and codified. There are two CSA proposals (issued in 2002) pending that address continuous disclosures for reporting companies and investment funds. Since these are only proposals at this stage, the Committee cannot fully embrace this change without knowing what this disclosure system will require reporting companies and investment funds to disclose, as well as the required frequency of disclosures and information updates. (Please refer to our comments under **CONTINUOUS DISCLOSURES REQUIREMENTS**.)

We believe strongly that this change in prospectus requirement should only apply to reporting companies (issuers) that are in good standing with all SRAs and its securities are actively trading on the secondary markets. Also, the proposed prospectus requirement should not be implemented until the integrated continuous disclosure system is defined and operational (all electronic filing systems – SEDAR and SEDI - are working).

Form and Content of a Prospectus

The Committee supports some flexibility for foreign firms seeking to issue securities in Canadian capital markets. However, the requirement of the foreign jurisdiction, by which the firm is regulated, should be at a minimum consistent with Canadian regulatory prospectus requirements with regards to disclosures – content and timeliness of information. Also, the firm should be in good standing with the foreign jurisdiction.

4. TRADING IN DERIVATIVES

Background:
There are differing approaches to how jurisdictions regulate trading in derivative contracts. In some jurisdictions, securities legislation defines the term "futures contract" to include over-the-counter derivatives, and "exchange contract" for derivatives traded on an exchange. Other jurisdictions have separate commodity futures legislation. In Québec, the legislation specifically provides that certain requirements apply to specified derivative contracts.

There are two models used in Canada for regulating derivative trades. One is that the trading in futures and options and commodity contracts are regulated separately and second is that both types of trading are regulated by one Act. Years ago, BC and Alberta, combined these trading activities together, covering all kinds of over-the-counter derivatives, exchange-traded contracts and the like. Ontario currently has two separate Acts for such trades.

CAC Response:
The Committee supports having one set of regulations, or an Act, that covers all trading activities and one SRA regulating these activities. Under this scenario, the same regulator regulates them, thus, eliminating inconsistencies in regulations for similar activities between the different Acts. Additional support for this scenario is that the registrant, whether trading futures and options or other securities, is same. Therefore, the requirements for capital, proficiency, bonding, and reporting should be the same.

5. REGISTRATION and PROSPECTUS EXEMPTIONS

Background:
Securities laws provide exemptions from the prospectus and registration requirements where the goals of securities regulation can be accomplished without compliance with these requirements. There are a number of exemptions that are substantially similar in most jurisdictions which would be included in the USL. Some jurisdictions have exemptions which are local in nature and scope and would be adopted as Local Rules. There are also a number of exemptions that would not be retained in the USL exempt market regime because they have been replaced by other exemptions or no longer reflect the needs of the exempt market.

In particular, the USL would make capital raising exemptions a top priority. The USL would reconcile Alberta Securities Commission (ASC) and British Columbia Securities Commission (BCSC) capital raising exemptions contained in Multilateral Instrument 45-103 *Capital Raising Exemptions* with the Ontario Securities Commission (OSC) Rule 45-501 Exempt Distributions and the regime in Quebec.

CAC Response:
We strongly support the CSA's efforts to harmonize capital raising exemptions and regulations across Canada. Small businesses seeking financing and investors seeking venture capital investments are not so diverse by province that different regulations are required by jurisdiction. Divergence in securities regulations creates more differences and nuances between markets given the provincial origin of the activities and transactions.

In November 2001, we responded to a joint proposal of the ASC and BCSC regarding capital raising exemptions. In this letter, we indicated our disappointment that the CSA could not promulgate a national instrument that would be used by all provincial securities commissions. During this timeframe, the OSC had recently finalized a rule for capital raising exemptions in 45-501. We observed that such actions and rulemaking (resulting in different regulations) by three

of the largest securities commissions in Canada were contrary and counterproductive to the CSA's overall goal for harmonizing securities regulations. As a consequence, Canadian capital market participants would need to understand, as well as administer, multiple rules for similar transactions, creating unnecessary duplication and additional costs.

6. CONTINUOUS DISCLOSURE REQUIREMENTS

Background:
Securities laws require issuers that fall within the definition of "reporting issuer" to make two types of disclosure on a continuing basis:

(1) periodic disclosure of financial and business information; and

(2) timely disclosure of material changes in their affairs.

These requirements attempt to create an even playing field where all investors have access to the same information.

CAC Response:
We strongly support an enhanced disclosure system that requires evergreen, or continuously updated, financial and nonfinancial information of all material and pertinent facts. We prefer a single evergreen document that contains current information and links previous periodic filings together (electronically or by hyperlinks) rather than a series of independent updates, which are consolidated quarterly or annually. Additionally, this single document should denote the reasons for the updates, for example, the nature and timing of the event. This format will enable an investor to assess properly various investment options with more ease and assurance that he or she has captured all the relevant and current information about those options. Thus, the investor will have the necessary information to make a well-informed investment decision.

Standardized Format for Financial Reporting

We support strongly a prescribed or standardized format for reporting and, therefore, are concerned greatly that reporting companies will have too much discretion in determining the content and format of reports. Proposals that simplify or streamline disclosures are often an invitation to issuers to provide less than full and transparent disclosure. It has been our experience that encouraged or discretionary disclosures are rarely provided, or are often inadequate and incomplete when provided. Furthermore, companies have the tendency to disclose prominently the good news and to obfuscate the bad news, using devices such as in pro forma earnings releases.

Users have considerable problems when disclosures are discretionary and not standardized because it is difficult to compare and analyze several companies within the same industry and/or across industries. Comparable information, representing the same time period and data calculated

in similar ways, is extremely important for evaluating companies' financial performances and conditions. Otherwise, investors cannot assess properly the differences between companies' results of operations, financial conditions, and sources of uncertainty - such as business, financial, and liquidity risks - for determining which investments are appropriate.

Determination of Material Information

Another area of concern is what should be disclosed based on materiality. We do not understand fully the distinction being made between the current standards, which are full, true and plain disclosure of all material facts and material change, as compared to the proposed single standard of disclosure of all material facts. Frequently, companies use only quantitative thresholds as a rule of thumb in determining materiality, excluding qualitative elements, such as risks, terms and conditions of business arrangements. These qualitative elements could potentially have a material impact on a company's operating results and financial condition.

Therefore, we believe that materiality assessments based solely on quantitative thresholds are inadequate and incomplete. Corporate management and external auditors must consider all relevant circumstances, including both quantitative and qualitative factors in assessing an item's materiality.

Electronic Access to Market Information

Finally, we believe, that company information should be readily and widely available to ensure that investors have full access to the information. In addition to having the company information posted on SEDAR, we suggest that company information should also be posted on the company's website and provided upon request in a timely manner to any current or potential investor.

7. INSIDER REPORTING OBLIGATIONS

Background:
"Insiders" of a reporting issuer must report their trades in voting securities of that issuer. The purposes of insider reporting obligations are to:

(4) provide the market with information about trades by those who have the best access to information about a reporting issuer;

(5) instill greater investor confidence in the market; and

(6) deter insiders from trading on undisclosed material information.

This area is largely harmonized. All jurisdictions require insiders to file reports within 10 days of becoming an insider of a reporting issuer (assuming that the insider holds securities) and within

10 days after a change in their holdings. National Instrument 55-102 *System for Electronic Disclosure by Insiders* harmonized the requirements for the form of insider filings across Canada. Until SEDI is operational, insider reports are to be filed in paper format. Once SEDI is operational, insider reports would be filed on-line.

CAC Response:
The Committee supports strongly the underlying principles of the CSA's USL proposal for insider trades reporting as well as those reflected in the National Instrument 55-102, *System for Electronic Disclosure by Insiders (SEDI)* –

(1) provide the market with information about trades by those who have the best access to information about a reporting issuer;

(2) instill greater investor confidence in the market; and

(3) deter insiders from trading on undisclosed material information.

In a recent letter to the CSA, dated 31 January 2003, the CAC noted the importance of maintaining these principles by requiring timely and transparent reporting of insider trades. In addition, we identified areas that needed to be improved, such as the timeliness of reporting and electronic access to information. The following is an excerpt from this letter -

> *"A core principle of AIMR (and the CAC) is that market transactions must be transparent (i.e., timely, relevant, and comprehensive disclosure of information) and available to all investors for making well-informed investment decisions. Investors want and need information about insider trades and changes in beneficial ownership because it provides insight to management's views of the company's performance and/or future prospects*.
>
> *When NI 55-102 became effective in October 2001, it established an improved disclosure standard for insider trades by (1) accelerating the filing deadline to ten days and (2) requiring electronic filing. The Committee commends the CSA on its foresight and efforts to modernize the reporting requirements for such trades, moving away from paper filings and towards more timely electronic filings. Such reporting improves the quality of information disclosed by making it more timely, relevant, and accessible. Shortly after becoming effective, the electronic filing on the SEDI was suspended in February 2002 because of technical difficulties. Consequently, insiders are once again filing paper forms.* ***To fully benefit from NI 55-102, we urge the CSA to quickly resolve those technical problems and to resume its leadership role in requiring electronic filing of insider trades****.* [emphasis added]

Comparison of Canadian and U.S. Filing Requirements

Because many Canadian companies are cross-listed on Canadian and U.S. exchanges (and investors often trade on both exchanges), the CAC strongly supports consistent regulations between the two countries. Since the adoption of NI 55-102, U.S. regulatory authorities have moved to incorporate, and even enhance, certain regulations introduced by the instrument.

With the adoption of the Sarbanes-Oxley Act of 2002, the U.S. Securities and Exchange Commission has accelerated the filing deadline for beneficial ownership reports, and subsequent trades resulting in changes to beneficial ownership, to two business days. In addition, the Act requires electronic filing and website posting of beneficial ownership changes by 30 July 2003. In keeping with our core principle of improving transparency, the CAC urges the CSA to consider accelerating the reporting deadlines, and to once again, reinstitute electronic filing of insider trades and beneficial ownership."

Definition of an Insider

For reporting purposes, we support the CSA's proposed clarification of a senior officer to include a function-based approach for determining an insider of the reporting issuer. This clarification would include:

(1) An individual performing the functions of the chief executive officer, chief financial officer or chief operating officers; or

(2) An individual working for an issuer, or any of its affiliates, in an executive capacity whose usual responsibilities expose the individual to non-public material information about the reporting issuer.

Equity Monetization Transactions

The Committee supports the CSA's proposal for a Multilateral Instrument 55-103 to require reporting about derivative-based or equity monetization transactions by insiders of a reporting issuer. We will provide further elaboration of our view in our response to this CSA proposal later this month.

8. THE EARLY WARNING SYSTEM

Background:
The USL should contain an exemption from the early warning requirements for offerors that are acquiring securities under a formal bid. Securities laws require security holders to give notice of

changes in their holdings that may affect control of an issuer. These disclosure requirements, known as the "early warning system," provide that:

(1) "Offerors" that reach a certain percentage of security holdings in a reporting issuer (10% or more) must disclose their holdings immediately by press release and again two days later by filing a report; and

(2) Offerors must make the same disclosure upon acquiring an additional 2% or more of the same class of securities or if there is a change in another material fact in a previously filed report.

In all jurisdictions except Ontario, offerors acquiring securities under a formal bid are exempt from the early warning requirements. If there is a formal bid, the offeror would be required to disclose any acquisition of securities under the take-over bid rules and therefore it is redundant to require them to do so under the early warning system. The USL would include an exemption from the early warning requirements for offerors acquiring securities under a formal bid.

CAC Response:
This area and the area of **CONTROL PERSONS** are linked with insider reporting. As such, we believe that regulations for these areas – **EARLY WARNING**, **CONTROL PERSONS**, and **INSIDER TRADING** - should be consistent or interconnected with each other. There should not be a distinction made for reporting purposes. The control person would have to file electronically on SEDAR and with the relevant exchange rather than the current method of filing such notices in paper format with an SRA. The Committee strongly supports this proposed change because information would be more accessible.

9. CONTROL PERSONS

Background:
Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102"), which applies in all jurisdictions but Québec, harmonized rules relating to "control distributions". A control distribution is a trade in a previously issued security from the holdings of a control person.

Control persons are required to give advance notice of their intention to sell for two principal reasons:

(1) To ensure the market receives advance warning of a trade potentially large enough to affect control of an issuer or to move the price of the issuer's securities; and

(2) To help SRAs and SROs monitor the trading activity of major security holders.

Control persons must also file an insider report within three days of completing any trade under the prospectus exemption contained in MI 45-102, instead of the normal 10 days.

CAC Response:
We support the accelerated reporting requirement for such activities of control persons. Additionally, we believe that other insider trades and activities should also have similar requirements for reporting. Please refer to our comments made under **CONTROL PERSONS**, and **INSIDER TRADING.**

10. INVESTMENT FUNDS

Background:
The regulation of mutual funds is already substantially harmonized. The CSA have created harmony through a number of national instruments which have been adopted by each Canadian jurisdiction:

(1) National Instrument 81-102 *Mutual Funds*;
(2) National Instrument 81-101 *Mutual Fund Prospectus Disclosure*;
(3) National Instrument 81-104 *Commodity Pools*; and
(4) National Instrument 81-105 *Mutual Fund Sales Practices*.

Further, CSA policy initiatives are currently underway that would impact the USL Project. They include:

(1) Mutual fund governance and a proposed framework for regulating mutual funds and their managers;
(2) Updating continuous disclosure for all investment funds;
(3) A Joint Forum of Financial Market Regulators review of point of sale disclosure documents for mutual funds and segregated funds;
(4) Developing a regulatory response for alternative investment fund products, including hedge funds; and
(5) A revised regulatory regime for funds of investment companies.

CAC Response:
We have responded to several proposals over the past twelve months, including continuous disclosure requirements for investments funds and fund governance. Overall, we strongly support the proposals for expanding disclosure requirements to include a discussion and analysis of fund performance. Investment fund reporting should be similar to that required for reporting companies in Canada. Similarly, we believe that governance of an investment fund should be structured like the governing body for a reporting company.

For elaboration on these views, please refer to our comment letters, which are available on AIMR's web site, using the following links:

(1) *Concept Proposal 81-402 - Framework for Regulating Mutual Funds and Their Managers* –
http://www.aimr.org/advocacy/02commltr/02reg_mutfunds.html

(2) *Proposed National Instrument 81-106 and Companion Policy 81-106CP Investment Fund Continuous Disclosure, and Form 81-106F1 Contents of Annual and Quarterly Management Reports of Fund Performance* – http://www.aimr.org/advocacy/02commltr/02csa_prop_ni.html

Hedge Funds

In recent letters to the U.S. SEC and the U.K Financial Services Authority (FSA), the AIMR Advocacy Program has expressed concerns regarding the current marketing practices of hedge funds to retail investors. Generally, it is doubtful whether hedge funds in their current or altered forms are appropriate for less-sophisticated investors, given the current regulatory and disclosure environment for such funds. Typically, hedge funds do not disclose information about their strategies, holdings, and risks. This allows managers the flexibility to act quickly on their beliefs about the most appropriate strategies. However, those actions are not transparent to the rest of the market. Given the lack of transparency and high levels of risk attendant to many hedge fund strategies, we believe that such funds should be marketed only to sophisticated investors and that the definitions of "sophisticated" be tightened.

Treatment of Loan and Trust Pools

In reviewing the USL, the Committee focused on the treatment of loan and trust pools in the same manner as pooled funds for portfolio managers. We found the following excerpt from the proposal to be confusing:

> *Currently, loan and trust pools are considered private mutual funds and exempted from the registration and prospectus requirements. As noted above (USL would harmonize the definition of a mutual fund) the USL would limit the definition of "private mutual fund" to investment clubs only. This would ensure equal treatment of loan and trust pools and pooled funds offered by portfolio managers since they are equivalent products.*

Based on the above wording, it is not clear whether pooled funds would be required to file a prospectus or whether only accredited investors could participate in pooled funds. Therefore, we believe clarification is needed to understand the proposed treatment for these types of investment pools.

11. TAKE-OVER AND ISSUER BIDS

Take-over and issuer bid rules ensure that all offeree security holders have access to adequate information about an offer and benefit equally from it. Currently, eight jurisdictions regulate take-over and issuer bids. The relevant provisions are essentially harmonized except in Québec where harmonized legislation has been adopted but is not yet in force.

The USL would introduce take-over and issuer bid laws in the jurisdictions that do not currently regulate these transactions and would eliminate the differences that currently exist between Québec's provisions and those of the other jurisdictions. Since the CVMQ routinely issues exemption orders on a case-by-case basis that result in *de facto* uniformity, the proposed changes to Québec's take-over bid regime do not require policy debate.

CAC Response:
Presently, the CAC has not formulated views on this area. The Committee is currently reviewing this area in more detail as it discusses the OSC's proposed amendments to Rule 61-501 *Insider Bids, Going Private Transactions and Related Party Transactions.* We intend to issue a comment letter during the first week of June.

12. CIVIL LIABILITY

Background:
Purchasers of securities have statutory rights of action against an issuer for fraud or misrepresentation. These statutory rights of action are much more powerful than their common law counterparts because the plaintiff in a statutory action does not have to prove reliance on the misrepresentation, and the right of action clearly applies where a misrepresentation results from an omission to state a material fact.

These provisions recognize the importance of information to the securities regulatory system. The documents to which primary market liability attaches are generally the basis for a purchaser's investment decision, and in the context of an initial public offering, they are also often the only publicly available information about the issuer. Statutory rights of action apply to misrepresentations contained in a prospectus, an offering memorandum and a take-over bid circular and related documents.

A right of action is also available to a purchaser against the dealer or offeror who fails to comply with the requirement to send a prospectus, an offering memorandum (in BC only), or a take-over or issuer bid circular. Finally, there is a right of action available to a purchaser or seller of securities for damages as a result of a trade with a person or company who is, at the time of the trade, in a special relationship with a reporting issuer and in possession of undisclosed material information about that issuer.

CAC Response:
The CAC strongly supports the proposal that would require similar remedies, relating to civil liabilities, which currently exist for the primary markets (or IPOs) to be applied to the secondary markets. At present, there are no rights to action available for secondary market purchasers even though trading by those participants represents about 94% of all the market activity (primary and secondary).

We believe that civil liability is an important element (or integral part) of a continuous and integrated financial reporting system. The civil liability rules should filter out frivolous claims that have no merit. Additionally, an actionable event or occurrence should be defined similar to that under the Enforcement part of the proposal.

We believe that the concept of "misleading" information should cover both the quality of information provided and the lack of disclosures that involve material data and information. The Committee addressed a similar issue regarding the disclosure of material information in its letter to the OSC dated 14 August 2002 regarding the OSC's Five-Year Review Committee Draft Report. The following is an excerpt from this letter.

> *Recommendation 42 – Disclosure of Material Information*
>
> *We believe that the legislation should be amended to require disclosure of all material information on a continuous disclosure basis for the following reasons:*
>
> - *Material information is a broader standard than material change, which is the standard currently in the legislation. Disclosure of material information, which includes material change, means more information is available to the marketplace sooner and there are fewer opportunities for improper insider trading.*
> - *The amendment will clarify requirements by removing the confusing distinctions between material "fact", "change" and "information", replacing them with a single standard.*
> - *The material information standard was adopted by the Canadian exchanges over a decade ago and constitutes the existing standard in practice, regardless of what the legislation provides, and so does not change requirements for issuers. However, amending the legislation will add "teeth" to assist in enforcing these requirements, including statutory civil liability.*
> - *Listed issuers have been required to comply with the material information standard for over a decade, and we are not aware of any serious problems with "price interference" in negotiating or setting offering prices under the current material information standard.*
> - *We disagree with the suggestion that disclosure of material information, which includes some information external to the issuer, would impose a significant burden on issuers to continually monitor external events. Firstly, issuers are already required to comply with this standard – it is not a new burden. Secondly, it is not a significant burden. Issuers are not required to interpret the impact of all external political, economic and social developments on their affairs. Only if the external development has had or will have a direct effect on their business and affairs that is both*

material and uncharacteristic of the effect generally experienced by other issuers engaged in the same industry, does the issuer need to disclose the impact.

13. ENFORCEMENT

Background:
Under the USL, a contravention of any provision of the act or rules would be an offence. This is a departure from the *status quo* in some jurisdictions whose legislation specifically lists those provisions that may, if contravened, be prosecuted as an offence. This change would give SRAs more flexibility in determining how to frame an enforcement action. It would also remove the need to amend legislation each time an SRA adds to the list of provisions that may be treated as an offence.

The penalties on conviction for an offence would not necessarily be harmonized. Local differences in amounts of penalties are appropriate and reflect the fact that jurisdictions with larger markets and issuers may need a higher penalty in order for their enforcement powers to be meaningful. Penalties would be contained in the Administration Act.

CAC Response:
Overall, we have concerns about whether each SRA would enforce the USL in a consistent way. In particular, the Committee does not agree with the current approach giving each SRA the discretion to determine the amount of penalties. The proposal would give SRAs the power to impose an administrative penalty upon finding a contravention of the USL.

We believe there should be ceilings established for various types of contraventions which all SRAs should have for determining penalties. Moreover, there should be a pattern to how penalties are determined to avoid having SRAs set penalties that result in a wide-range of amounts for similar contraventions.

14. JOINT HEARINGS

Background:
The USL should contain provisions relating to the hearing rules that would apply to a joint hearing. There is an initiative currently underway to develop rules for joint hearings. These rules would be included in the USL if they are finalized prior to the implementation of the USL. Otherwise, the delegation provision contained in the Administration Act would be drafted to permit the panel conducting the joint hearing to determine that one particular jurisdiction's laws apply to the proceedings.

CAC Response:

The Committee agrees that the USL should have provisions that indicate the proceedings for joint hearings, which might be conducted by more than one SRA to address a given contravention.

15. GENERAL PROVISIONS

Background:
The USL would harmonize rule making heads of authority. The increasingly dynamic landscape of today's capital markets requires SRAs to respond quickly and effectively to emerging issues. However, the legislative process is lengthy and therefore, amendments to legislation can take several years to implement. This problem is further compounded due to the nature of current securities laws, which are complex and generally require a degree of expertise and industry knowledge.

Rule making authority allows SRAs to respond more quickly to changing market circumstances. Most SRAs already have the power to make rules that have the same force and effect as a regulation made by the Lieutenant Governor in Council of the province or territory. To achieve and maintain harmonization, it is imperative that the SRAs of all jurisdictions of Canada have rule making authority.

CAC Response:
We believe that the "Rule Making Authority" provision should be used primarily to promote conversion and harmonization among the SRAs rather than diversion between rules. The proposal highlights that it is more difficult to make necessary changes to securities regulations (to accommodate shifts in market activities and environments) using the legislative process. This process could take up to seven years to implement changes, which is not responsive enough for the capital markets. The Committee agrees with this assessment and supports this general provision if it is used primarily to promote convergence and harmonization among securities regulations and how SRAs enforce these regulations.

Closing Remarks

Overall, we support the primary thrust of the USL which is to harmonize securities regulation and legislation across all provinces and territories in Canada. Harmonization of provincial securities legislation and oversight is a necessary step to improve the current regulatory system in Canada. However, we have some concerns about the proposed exemptions and variances in enforcement, including remedies for non-compliance of regulations. Because of the limiting effects these exemptions have on total convergence, we consider the current USL proposal as a "stop-gap" approach to securities regulation in Canada and thus, not a long-term solution.

We appreciate the opportunity to comment on the Canadian Securities Administrators Notice and Request for comment 11-402, *Concept Proposal for Uniform Securities Legislation*. If you have

any questions or seek elaboration of our views, please do not hesitate to contact Georgene Palacky at 1.434.951.5334 or gbp@aimr.org.

Sincerely,

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