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Chris von Boetticher
Vice-President, General Counsel and Secretary

September 29, 2010

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Registrar of Securities, Nunavut

Dear Sirs/Mesdames:

Re: Request for Comments
Proposed Amendments to National Instrument 31-103 – *Registration Requirements and Exemptions*

We are providing this letter in response to the Request for Comments of the Canadian Securities Administrators (the "CSA") on the proposed amendments to National Instrument 31-103 – *Registration Requirements and Exemptions* ("NI 31-103"), Companion Policy 31-103 – *Registration Requirements and Exemptions* ("CP 31-103") and National Instrument 31-109 – *Registration Information* ("NI 31-109"), published on June 25, 2010 (collectively, the "Amendments").

Background to the CI Financial Group

CI Investments Inc. ("CI") and its affiliates (collectively, the "CI Financial Group") are the managers of a wide range of investment products and services, including mutual funds and segregated funds. As of August 31, 2010, CI and its affiliates had aggregate assets under management of approximately $66.7 billion. The CI Financial Group also includes several registered investment dealers and mutual fund dealers, including Assante Financial Management Ltd., Assante Capital Management Ltd and Assante Estate and Insurance Services Inc. (collectively, "Assante"), which had aggregate assets under administration of approximately $21.2 billion as of August 31, 2010. As a result of the size and breadth of investment products and services provided by CI Financial Group, CI

has significant experience dealing with the current registration requirements and exemptions from the perspectives of investment fund managers, portfolio managers and dealers. We are pleased to draw upon such experience in order to provide you with our comments on the Amendments, set out below.

Section 12.1 - Capital Requirements

Although you have not requested comments on the new capital requirements of NI 31-103, we feel compelled to submit a comment and register our concern. CI requested and was granted relief from the requirement in section 12.1 of NI 31-103, that CI calculate its excess working capital using Form 31-103F1. Section 12.1 of NI 31-103 requires that all registered firms calculate their excess working capital in accordance with Form 31-103F1 – *Calculation of Excess Working Capital* ("Form 31-103F1"). Form 31-103, among other things, requires each registrant to deduct the total amount of any guarantee (line 11), which is not listed as a current liability on the firm's balance sheet, from its adjusted working capital (line 7). As a result, each registered firm's excess working capital is reduced by the aggregate amount of the non-current portion of its guarantees. NI 31-103, as drafted, makes no distinction between a registrant guaranteeing the liabilities of a third party and a registrant guaranteeing the liabilities of a related-party. The relief which CI obtained modifies this requirement so that CI is not required to deduct the entire amount of the guarantee but a much smaller amount which is consistent with an assessment of the remote risk of the guarantee being called upon. We submit that it would be appropriate to consider an amendment to Form 31-103F1 so that all registrants in similar circumstances can be subject to the same capital requirements without applying for relief.

We appreciate that the CSA have an important role to play in ensuring registered firms are adequately capitalized. We also acknowledge that guarantees, especially third-party guarantees, may increase a registrant's risk of insolvency and, therefore, may necessitate increasing the registrant's excess working capital requirement. It is our respectful submission, however, that the current requirement—that all guarantees, irrespective of their risk and/or character, be included in excess working capital—is unnecessarily onerous for the reasons set out below.

The excess working capital test established by Form 31-103F1, which we submit is a solvency test largely based on the test established for registered investment dealers by the Investment Industry Regulatory Organization of Canada ("IIROC"), is inappropriate for the other categories of registrants. This is because all other categories of registrants typically have a lower risk profile than an investment dealer.

Mutual fund managers do not have access to or control over the funds which are invested by their clients. These funds are held by a custodian on behalf of the funds and are not part of the assets of the manager and are remote from bankruptcy or insolvency risk. In addition, mutual fund companies are unique from other registrants as significant revenue is generated through the management of billion of dollars worth of investments pursuant to management contracts. These contracts are not recorded as assets on the balance sheet of the fund management company, despite the fact that these assets have an expected future value in the billions of dollars.

The value of an investment in a mutual fund is not affected by the financial performance or liquidity of the registrant. Even in the event that a registrant were called upon to honour a guarantee, under no circumstances could the money invested in the mutual funds be used to satisfy the guarantee and in most circumstances we expect that the value of the mutual fund contracts would far exceed the amount of any guarantee.

Additionally, we submit that third-party guarantees and related party guarantees should be distinguished. Third-party guarantees are inherently riskier than related party guarantees for a number of reasons including concerns surrounding: asymmetrical information, conflicting interests and the potential for abuse. Related party guarantees, especially guarantees between a wholly owned subsidiary and its public parent company that are made for valid business purposes, reflect practical business realities and permit organizations as a whole to access capital at a lower total cost. It should be noted that under Canadian Generally Accepted Accounting Principals and under International Financial Reporting Standards, related-party guarantees are treated as contingent liabilities, which are not recorded on the financial statements of the guarantor and show only in the notes to the financial statements. We submit that it is unreasonable that the excess working capital calculation should include a related-party guarantee when the likelihood of the guarantee being called is highly improbable.

In summary, the cost (a higher cost of capital) of the excess working capital requirement, as it is currently drafted, to shareholders outweighs the potential benefit (a small reduction in the cost and/or probability of insolvency). We submit that the interests of the public are best served by an excess working calculation that accounts for each of the following factors: (a) the size of the guarantee; (b) the registrant's category; (c) the likelihood the guarantee will be called; and (d) the nature of the guarantee (third-party guarantees versus related-party guarantees). Related party guarantees that are highly unlikely to be called should not be included in the calculation of excess working capital unless and until the circumstances warrant it.

Section 13.8 - Referral Arrangements

The proposed changes to section 13.8 of NI 31-103 prohibit registered firms from participating in a referral arrangement with another person or company, unless: (i) before the client is referred to the registrant, the terms of the referral arrangement are set out in written agreement; and (ii) the registrant ensures the information prescribed by subsection 13.10(1) is provided to the client. Previously, members of the Mutual Fund Dealers Association of Canada ("MFDA") were allowed to categorize referral arrangements as securities related and non-securities related (MFDA Member Regulation Notice 0030).

In this notice, the MFDA recognized a distinction between a securities-related and non-securities related referral arrangement. For example, some advisors have non-securities related referral arrangements with firms that provide tax return services for customers. The MFDA permitted members to focus their supervisory attention with respect to securities related referrals only.

Although it is evident that the rule on permitted referrals borrows from the MFDA general principals and obligations for registrants entering into such arrangements, sections 13.9, 13.10 and 13.8(2) and proposed amendments as written are still ambiguous and somewhat confusing as to which party has the responsibilities and obligations when the referral is with a non-registrant (i.e., a referral for non-securities related services such as legal or accounting services).

If the CSA is going so far as to broaden the scope of permitted referrals to allow and capture all non-securities related referrals, it should also make a distinction in the rule as to which party has the obligation to prepare and deliver disclosure to the client, with the view that a non-registrant would not necessarily be aware of or subject to the disclosure requirements in 31-103. The proposed changes are a step in the right direction in that the CSA has clarified it is the firm and not the individual registrant that holds the responsibility for supervision and monitoring, however, the proposed changes do not go far enough to clarify which party has these responsibilities when the referral is with a non-registrant. The supervision and monitoring obligations inferred in the rule appear to be written in the context of both parties being registrants when that may not always be the case.

Section 13.12 - Restriction on Lending to Clients

Section 13.12 prohibits registrants from lending money, extending credit or providing margin to a client. We have been advised that the provision applies to all registrants including portfolio managers and investment fund managers who are not IIROC members.

We understand that the CSA wants to ensure that any loans made by a portfolio manager to a fund are in the best interest of the fund and that the terms of the loan are commercially reasonable. However, such loans play an important role in enabling a fund to temporarily pay for unitholder redemptions and fund expenses. As a result, we respectfully submit that section 13.12 should be amended to explicitly allow for these activities.

From previous discussions with OSC staff, we understand that staff may allow loans to be used to pay for unitholder redemptions and fund expenses on a temporary basis.

Section 14.14 - Client Statements

The CSA, in its Request for Comments on the Amendments, asked registered firms to comment on how to balance the potential benefit investors receive from requiring registered firms to report on client name securities with the anticipated costs to industry. The CSA included a list of questions for dealers and advisors, in particular, to answer. The responses of Assante are set out below.

1. Clients will benefit from having one statement that includes positions in client name securities as it will provide them with a snapshot of all investment holdings.

2. If statements had to include IFRS fair value determination for pricing, clients would be able to see that the price was derived either from an active market or determined against the IFRS fair value standard. As long as a disclaimer explains that some prices are estimates, clients should be aware of valuations.

3. At the present time we only include client name positions from reliable sources that provide us with monthly reconciliations. We would only want to include positions where we acted for the client in entering the order through the books of the dealer.

4. As stated before, we would only want to include positions from our approved product list and from organizations that provide monthly reconciliations in electronic format.

5. In order to include client name securities we would have to make some programming changes and conduct testing to ensure it is correct. Costs and difficulty would be minimal.

6. A client relationship is considered to commence when a client completes, signs and has a new account agreement approved by the dealer. The relationship would end with client named securities when we learn that the client has sold the position directly with the issuer or through the dealer.

7. A registered firm should be exempt from the requirement to provide client name positions on statements when the registered firm is not made aware of the client holdings with the issuer or have control of those securities. We agree that certificate form holdings registered in a client's name or DAP/RAP accounts should be exempt.

8. There should be a short transition period to allow for programming to include client name positions. For most MFDA and IIROC firms this should not be a long period of time. Our firm could accomplish this in less than a month.

Amendments Relating to International Financial Reporting Standards (IFRS)

The CSA is proposing to adopt the prescribed IFRS valuation approaches and the IFRS term "fair value" for valuing securities in account statements. This term will replace the current term "market value". The proposed amendments to section 14.14 of the Companion Policy to NI 31-103 states that only where a registered dealer or advisor concludes "it in not able to determine a reliable fair value after using all reasonable efforts to apply IFRS valuation techniques" may the dealer or advisor then report in the account statement that the fair value of the security is "not determinable". In essence, the CSA proposal would require dealers to exhaust all IFRS valuation techniques each time a valuation takes place before dealers can reasonably conclude that a value could not be determined and no value assigned to the security. This will have an impact for many

dealers on the over 15,000 securities that have been cease-traded that are currently being zero-valued by dealers.

The Amendments are silent on the use of third-party pricing providers when an observable market price is unavailable. These third-parties have developed a specialized expertise in this area and entrenched in the day-to-day operations of dealers. We recommend that the CSA clarify that dealers can have continued reliance on these service providers as a source for valuing securities and that this remains an acceptable practice under the Amendments.

Form 33-109F6 – Firm Registration

The definitions of "Parent", "Significant Control", "Specified affiliate" and "Specified subsidiary" when read together could be interpreted to require a registrant in, for example, Part 7 of Form 33-109F6 (the "Form"), to disclose ongoing investigations of subsidiaries of a company that holds indirectly, through various holding companies, 21 per cent of the outstanding voting rights attached to all the outstanding voting securities of the registered firm completing the Form. This is information that the registered firm in the normal course does not have access to nor likely would be granted access to by the shareholder. The definitions in the form should be clarified to specify that only information regarding a direct parent is required.

We appreciate the opportunity to comment on the Amendments. If you have any questions regarding our comments, please contact the undersigned.

Yours very truly,

CI INVESTMENTS INC.

Chris von Boetticher
Vice-President, General Counsel
and Secretary

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