Borden Ladner Gervais LLP
Scotia Plaza, 40 King St W
Toronto, ON, Canada M5H 3Y4
T 416.367.6000
F 416.367.6749
blg.com

December 23, 2015

DELIVERED BY EMAIL

The Cooperative Capital Markets Regulatory System
comment@ccmr-ocrmc.ca

Dear Sirs/Mesdames:

Re: Comments on Revised Consultation Draft of the proposed Capital Markets Act, the proposed CMRA Regulations and the proposed National Instruments – Securities & Capital Markets Practice Group of Borden Ladner Gervais LLP

We are pleased to provide the various provincial/territorial governments (the governments) involved with the proposed Cooperative Capital Markets Regulatory System (the System) with comments on the above-noted Consultation Drafts, which are designed to be administered by the proposed Capital Markets Regulatory Authority (the Authority or CMRA). Our comments are those of individual lawyers in the Securities & Capital Markets practice group of Borden Ladner Gervais LLP and do not necessarily represent the views of BLG, other BLG lawyers or our clients.

It is obvious that the various governments and the staff of the securities commissions of the provinces/territory participating in the development of the System have worked extremely hard on the Consultation Drafts and to achieve the high level of progress in working towards the System that is apparent from the various, very lengthy publications. We sincerely commend the governments and staff for this significant achievement.

The August 2015 publication specifically asked that we submit separate comment letters with our comments on the various instruments. To accommodate this request, but also to keep our comments all together in one document, we have provided our comments in separate sub-documents with appropriate labeling, attached to this cover letter. For each comment category, we have provided the names and contact information of the individual BLG lawyers who would be pleased to discuss the issues and comments identified. To the extent we do not provide comments on a particular CMA provision or CMRA Regulation, we note that this is largely a function of time and other priorities. Given the voluminous package of documents published for comment since August, we have concentrated our review and comments to the areas we note in this letter.

We provide comments on:

- The revised proposed CMA, with particular focus on registrants, investment funds, public companies and the responses to our earlier comments provided in our comment letter dated December 8, 2014.

- Certain of the proposed CMRA Regulations, where warranted, and time has permitted a closer review.

Given that the National Instruments published for comment are generally unchanged from the current CSA National Instruments, we have no comments on these instruments. We are very appreciative that the CMRA did not make any substantive changes to these Instruments and we agree wholeheartedly with this approach. We note however, that whole National Instruments are "missing" (the exempt markets for example) and accordingly reserve judgement on the proposed approaches to the National Instruments.

We note that Carol Derk participated in providing comments on the derivatives regime proposed under the System with the other members of the Securities Advisory Committee to the Ontario Securities Commission and as a member of the ISDA Canadian working group. Accordingly we do not comment on the derivatives regime in our firm comment letter.

We very much appreciate the additional comment time that was provided with this package of revised and new documents. We were very pleased to see the blacklined version of the proposed CMA that was published in October, along with the description of the responses to the various comments received. We have also reviewed the proposed transition scheme published earlier this month in preparing this comment letter. We will look forward to a formal comment period on the revisions to the CMA and/or the CMRA Regulations that will be prepared to accommodate the proposed transition scheme. Owing to the pressures of time, client demands at this time of year and the large amounts of other material to review, we do not comment on the proposed transition scheme in this comment letter, except in respect of one substantive comment below.

We also participated in the consultations organized by the federal government in connection with the proposed federal Capital Markets Stability Act held during the summer of 2015. We look forward to being invited to review a revised draft of this statute, once it is completed and we hope that our earlier comments (provided last December and during the consultations) will be taken into account.

The lawyers participating in the submission of this letter would also like to highlight our concerns about the following matters, all of which, we consider critical for the various governments and the Authority to take into account as they move forward:

1. We understand that the governments and staff working on these Consultation Drafts started from the legislation and rules that are in place in British Columbia. While we understand why this was done, we consider this to be an undesirable starting point, given the nature of the regulatory system in Ontario and the degree to which the Canadian and international capital markets operating in Canada understand and have worked with the Ontario legislation and rules, and the administration of that legislation and rules. We caution that we do not mean anything judgemental with this statement, simply that we consider it would have been better to start with regulation that the vast majority of market participants are most familiar. In a sense we consider that the approach taken with the new legislation and regulation results in "throwing the baby out with the bathwater"; the "bathwater" being the Ontario legislation and rules and the "baby" being the high degree of understanding and compliance with that legislation and rules, coupled with years of experience with the administration of that legislation and rules. It will take considerable time for market participants to understand all of the nuances of the legislation and CMRA Regulations, particularly given that they are drafted in a complex manner where the meaning of the provision may not be intuitively obvious.

2. Related to the above-noted comment, we note that the governments propose substantial revisions to existing regulation and while we understand the desirability of doing this as part of this major initiative, we caution the governments and the staff and executive of the Authority that it will take additional time for market participants to get up to speed on the CMA, the Regulations and the revisions to the National Instruments.

3. We continue to urge the governments and the Authority not to rush into completion of any of these initiatives, including the establishment of the Authority and the finalization of the Consultation Drafts. The proposed June 30 and fall 2016 target dates for implementation as referred to in the materials is extremely aggressive and we believe unrealistic, given the sheer scale that we anticipate is involved in finalizing this material and transitioning to the Authority. We recommend further consultation and we would be happy to participate in any such further consultation, particularly, given our firm expertise, on matters relating to investment funds and registrants, provided we were given sufficient time to undertake this work.

   In addition to our wish to review, in more detail, the proposed transition provisions and to be able to provide feedback to the Authority on these provisions, as noted above, we also note in the revised CMA references to a Capital Markets Regulatory Authority Act and we urge the governments to publish this statute for an advance review and comment. Given that this document can be expected to set the ground-rules for how the Authority and the Tribunal (as defined in the CMA) will operate, as well as their respective governance, we believe it most appropriate that feedback be sought from the Canadian capital markets industry participants on this important piece of proposed legislation.

4. It is obvious with the very many lengthy documents published since August 25 that the implementation of the Authority, the coming into force of the CMA and the various CMRA Regulations and National Instruments will be very complex indeed. We urge the governments and various CSA staff working on putting the System together to allow for easy 'fixes" of unintended consequences and for the inevitable glitches in the various

pieces of this very intellectually challenging system, which, in our view, expands greatly on the "status quo" and significantly changes the established approaches to regulation of securities, issuers and industry participants that have been in effect for many years. No matter how carefully this material is reviewed and commented upon by industry and legal advisors to the industry, there will be matters that must be fixed and we urge a collaborative, non-bureaucratic approach to ensure that those fixes can be and are made prior to the effective date of the CMA and the CMRA Regulations.

5. We continue to urge the Authority and the governments to publish as soon as possible, for comment, an explanation of the "interface" that will be put in place with the CSA members whose governments will not be joining the System. It will be essential for this interface to be as efficient and user-friendly as possible and to cause the least amount of red tape for Canadian and international capital markets participants. We note that since capital markets participants will be required to comply with the new regime, as well as the existing regulatory systems, compatibility will be key to the success of the System.

6. We have a very serious concern with the proposed approach to transition, as set out in the Summary of Proposed Transition Approach published in December, which will, unless changed, require all registrants to undertake costly analyses of their businesses to determine the impact of the CMRA, and if necessary, apply for new or an extension of existing exemptions that exist from one or more members of the CSA. Our reading of the December transition table is that the transition rules will place the onus on firms who are subject to inconsistent decisions (e.g. a firm which is registered in one CMRA jurisdiction and subject to terms and conditions in another for the same category of registration), to apply to vary the conditions to avoid any potential business disruptions. Further, where there are terms and conditions on a firm's registration that relate to the same issue, the stricter terms and conditions would take precedence. In addition, since discretionary exemptions that were granted before September 28, 2009 will be deemed to expire two years after launch of the Authority, firms will need to apply to extend the exemptions after launch of the Authority. In addition, where there is a potential for conflict between a registration status and the ability to rely on discretionary exemptions, firms will have to apply to vary their exemption orders. All of this will require time consuming and costly analysis by registrant firms, presumably well in advance of the launch date of the Authority. We also have serious concerns as to the ability of the staff and decision makers within the Authority to provide the requisite extension orders on the appropriate timing and without "rethinking" previous relief that is today working appropriately and has been appropriately granted. We consider that this aspect of the transition proposals must be rethought and we would be pleased to discuss this further with the governments and staff. We strongly recommend a complete grandfathering of previous exemptions and approvals, including terms and conditions. To do otherwise would be unfair and burdensome to firms that today are operating in full compliance with the laws.

7. We also note that the various blanket orders and local exemptions that are today relied upon by industry participants may or may not be carried forward under the CMRA. We recognize that the August 2015 package contains a description, many pages long, of blanket orders, local rules etc. that will or will not be carried forward. We have not had sufficient time to review all of these to assess appropriateness and the impact on our

clients. We recommend that the governments continue to consult on this aspect of the implementation of the CMRA. We would welcome the opportunity to continue to consider each of these orders and local rules and to provide additional commentary to the governments and the Authority on this point.

8. We continue to review, with our colleagues in BLG's Securities Litigation Group, the various changes inherent in Parts 9, Part 10 and 11 of the CMA as they relate to the civil liability regime and enforcement powers of the Authority and the Tribunal. We may provide you with any additional comments that we have later in the new year, but anticipate that further comment on these provisions will be necessary once the proposed Capital Markets Regulatory Authority Act is finalized and published for comment.

9. We make the following comment in connection with the registration requirements contained in the CMA and the Regulations, but it is important enough to many financial institutions that we are repeating the comment in this list of substantive concerns.

   The registration exemptions for financial institutions specified in section 35.1 of the *Securities Act* (Ontario) (the OSA) and subsection 31(a) of the *Commodity Futures Act* (Ontario) have not been carried forward. Part 4 of OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*, which provides for certain exemptions for trades by a financial intermediaries or Schedule III banks, has also not been carried forward. The CMR Jurisdictions state that, while no specific exemption is included, financial institutions may nonetheless be able to use a number of registration exemptions contained in the proposed instruments and regulations or apply for an exemption under section 94 of the CMA.

   While we would have thought that such a significant change would merit some discussion of a policy rationale, the governments do not provide a policy reason or rationale for this change. This is all the more true where these entities are subject to regulation by other regulatory authorities, such as OSFI. The governments have stated that financial institutions which currently rely on the financial institution exemption in Ontario will have to analyze their business activities to determine whether another exemption is available or whether to apply to register (or apply to obtain a discretionary exemption) to continue to engage in such activities. Presumably this analysis will be a time consuming and costly endeavour, all the more reason why some policy rationale should have been provided, and consideration given as to why and how financial institutions rely on the existing exemptions and why these exemptions should continue.

We very much appreciate the opportunity to comment on the Consultation Drafts. The implementation of the System and the establishment of the Authority are both very important initiatives and we urge caution, care and additional consultation in moving forward with both in order to preserve the proper administration of the securities laws of Canada and its application to the Canadian capital markets.

The following lawyers have, with the various other lawyers noted in the attached outlines as well as other lawyers who have reviewed and summarized the proposals, developed the various comments provided with this letter. Please contact any of us at the contact details provided below if you would like further elaboration of our comments. We would be pleased to meet with you at your convenience. We would be very open to considering reviewing in advance specific sections of any revised CMA or the CMRA Regulations to ensure their appropriateness, provided we are given enough advance notice.

Rebecca Cowdery
416-367-6340
rcowdery@blg.com

Philippe Tardif
416-367-6060
ptardif@blg.com

Michael Burns
416-367-6091
mburns@blg.com

Yours very truly,

"Rebecca Cowdery" *"Philippe Tardif"* *"Michael Burns"*

Comments on the Capital Markets Act (CMA)

Please note that all section references are derived from the Blacklined Version of the CMA that was published in October 2015 and which illustrates changes made from the version of the CMA that was first published for comment in 2014.

1. **Definition of "investment fund manager" –** We acknowledge the response to our December 2014 comment provided in the October 2015 summary of comments and responses (comment 17). There is no explanation as to why this policy decision was made, which we find very disappointing. The definition is an expanded definition from any that is contained in current CSA member securities legislation and in any of the CSA rules. We have significant experience in the impact of this model of regulation has had on international fund managers proposing to distribute international funds in Canada (under available prospectus exemptions) and now these IFMs will need to register with the CMRA, with Quebec and Newfoundland and Labrador, but not in the remaining provinces and territories of Canada. We do not see how this is an improvement on the existing bifurcated system, particularly since the IFM is, in actual fact, NOT acting as an "investment fund manager" in the CMRA provinces and territory. We provided extensive commentary on the various CSA members' split decision on how to regulate investment fund managers in Canada in the various comment periods for Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers* and Multilateral Policy 31-202 *Registration Requirement for Investment Fund Managers*. We consider that the "rest of Canada's" approach to such regulation inherent in Multilateral Policy 31-202 to be much more logical and consistent with reality and regulatory policy and reach and we urge the governments to revise the CMA and CMRA Regulations accordingly.

2. **Definition of "market participant" and inclusion of "independent review committees of investment funds"** We acknowledge that independent review committees of investment funds are "market participants" as defined in Ontario securities laws (see OSC Rule 81-802). This may be a change for some of the IRCs of investment funds that operate today in other CMA jurisdictions. However, the inclusion of this provision in the CMA must be made consistent with OSC Rule 81-802, and clarify that only IRCs of investment funds that are reporting issuers (and hence caught by NI 81-107) are "market participants". Anything else would be over-reaching by the Authority and the governments, given that today some investment funds that are not reporting issuers may have established IRCs that operate outside of applicable regulations. These IRCs perform a necessary, albeit unregulated, and important function for both investment fund managers and investors in private funds. Give the unregulated nature of their function, it is not appropriate that these IRCs be considered "market participants", giving rise to the consequences of being considered to be a market participant.

3. **Definition of "material fact" W**e point out that this definition, which we recognize is consistent with current securities laws, does not work (and has never worked) in the context of mutual funds, for the same reasons why the definition of "material change" didn't work properly for mutual funds prior to the amendments to the legislation and regulations made after 2000. The adoption of the CMA would be an excellent opportunity to fix this definition for mutual funds and make it meaningful. This would also mean that the definition of "misrepresentation" will work properly for mutual funds. We'd be pleased to assist you on developing the appropriate language for mutual funds.

4. **Definition of "non-redeemable investment fund"** We note that this definition is the same as the one used in Ontario today, but we have serious concerns on the way this definition is interpreted by OSC staff in the context (particularly) of funds where their managers may take a more activist stance with respect to investing. There must be room for collective investment schemes (CIS) to be regulated in accordance with "investment fund" regulation that is tailored to these schemes and their management, without simply "bumping" them into so-called "corporate finance" issuers. This issue appears to underlie the most recent discussion of this point contained in the December 2015 OSC Investment Funds Practitioner. We believe that the investment fund regime that has been developed, particularly over the past several years (as it applies to both mutual funds and closed-end funds) is very appropriate with regulation that serves and protects investors by being tailored to a collective investment scheme, where a management entity manages the fund, rather than a "corporate issuer". The fund industry and the types of CIS are much more nuanced than the current black and white approach taken by the OSC. We consider this an important and significant investor protection issue necessitating further consultation and consideration.

5. **Definitions of "professional company" and "professional company representative"** We are very pleased to see that the CMA has been drafted so as to at least contemplate the concept of an "incorporated salesperson", which is a matter that has been the subject of much debate, but little concrete movement over the past couple of decades. The definitions provided for in the CMA seem somewhat difficult to interpret and we recommend further review to ensure clarity – the concept should be that the professional company (PC) and the PC representative are engaged to provide services only to one other registered dealer or adviser, and we consider that the current definitions are unclear as to this result, although we believe the changes made to section 22 (new subsection 2) assist in defining this concept. However, we were disappointed to see that any movement on this issue cannot come from the CMRA itself, but must be dealt with after a request from the Council of Ministers. We consider that this issue has been so heavily studied for close to 20 years by all levels of government and regulatory staff, that action is now warranted and we recommend dropping the enhanced governance in this context.

6. **Definition of "security"** - We are disappointed that the CMA does not clarify in the definition of "security" that products that are governed by other regulatory regimes (such as guaranteed investment certificates and segregated funds) are excluded from the definition of security. The lack of clarity on this issue has long been a significant cause of concern for many in the industry and has led to confusion as to the scope of regulation by the various members of the CSA and the SROs. We recognize the response of the governments to our earlier comments on this definition (December 2014) and those of other market participants. We recommend the governments explain their rationale why this definition is expanded and how the securities regulatory regime might apply to GICs and segregated funds and whether these instruments are intended to be regulated by two regimes, and if so, how?

7. **Section 22 – Requirement to register - Absence of Financial Institution Exemption**

   The registration exemptions for financial institutions specified in section 35.1 of the *Securities Act* (Ontario) (the OSA) and subsection 31(a) of the *Commodity Futures Act* (Ontario) have not been carried forward. Part 4 of OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*, which provides for certain exemptions for trades by a financial intermediaries or Schedule III banks, has also not been carried forward. The governments state that, while no specific exemption is included, financial institutions may nonetheless be able to use a number of registration exemptions contained in the proposed instruments and regulations or apply for an exemption under section 94 of the CMA.

   While we would have thought that such a significant change would merit some discussion of a policy rationale, the governments do not provide a policy reason or rationale for this change. This is all the more true where these entities are subject to regulation by other regulatory authorities, such as OSFI. The governments state that financial institutions which currently rely on the financial institution exemption in Ontario will have to analyze their business activities to determine whether another exemption is available or whether to apply to register (or apply to obtain a discretionary exemption) to continue to engage in such activities. We anticipate that this analysis will be a time consuming and costly endeavour, which, we believe gives rise to all the more reason why some policy rationale should have been provided, and consideration given as to why and how financial institutions rely on the existing exemptions and why these exemptions should continue.

8. **Section 37 – Obligation to send prospectus, etc. –** While some of our questions posed in our December 2014 comment on this section, have been answered through the publication of CMRA Regulation 41-501 (section 5), we do not understand why the term "person who trades in securities" is used in place of today's reference to "dealers". Is this an intended difference? If so, what is intended to be caught with this reference? Why was it necessary to change the terminology? We also continue to urge the governments to

reconsider the phrase "other than a person acting as a purchaser's agent" contained in the legislation. This is a phrase that is used in existing legislation that has not ever been completely understood and clouds the delivery mechanics under existing legislation. We also find the various subsections confusing. For example, subsection (3) could be combined with subsection (1).

9. **Sections 55 and 56 Duty to client *and* Duty to investment fund –** We continue to be pleased that the CMA contains standards of conduct for these entities consistent with existing requirements, but are concerned about the addition to section 55 in contemplation of a statutory "best interest standard", which is being discussed at the CSA level at present. We consider that it is premature to build into the CMA mechanisms that would be used to introduce this standard before the current consultations and considerations are complete, or at the very least, the CSA have indicated a policy rationale and approach. We also strongly recommend that this regulation-making power be made subject to a request from the Council of Ministers, which would be similar to that provided for in connection with the possibility of changing the regime to regulate segregated funds, which would also have potentially far-reaching implications.

10. **Section 57 Conflicts of Interest (COI) –** Our December 2014 comment on this section still stands. While we agree that a registrant must identify, manage and disclose conflicts of interest – we are uncertain about the addition of the reference to an "investment fund". Most (if not all) Canadian investment funds have a manager or administrator – it is this entity that must manage, disclose and identify the COI with respect to its management of the investment fund, which is the concept enshrined in National Instrument 81-107. The "investment fund" does not have a COI – unless it is somehow "self-managed" with employees and agents directly engaged by the investment fund, which for the vast majority of investment funds in Canada, is not the case. We feel the CMA should recognize structures of investment funds appropriately.

11. **Section 70 Unfair Practice –** Our December 2014 comment still stands. We agree that the CMA appropriately can prescribe what will be unfair practices, however, we note that this provision seems very sweeping indeed, with much that could be open to differing interpretations. We consider that if this section is to be retained, the legislation should provide for a description of the criteria that a person must consider in determining whether an investor is "ignorant" or "illiterate" or too old, such that selling a security to that individual will be considered to be an unfair practice.

12. **Sections 138, 139, 140 – Rescission rights -** We recognize that some of our questions (posed in our December 2014 comments) have been answered now that CMRA Regulation 11-501 has been published for comment. We continue to question the policy rationale behind the provision of a rescission right for mutual fund purchases, in

circumstances where a Fund Facts document is given to a purchaser in advance of a trade and which gives the purchaser the ability to consider the mutual fund before investing, we still have the following comments.

a. **Section 138 -** This section appears to give purchasers of securities a broad "rescission" right – but it is still not clear what this means – what is the purchaser entitled to receive upon the exercise of the rescission right – particularly in the case of mutual fund securities? NAV at the time of purchase or NAV at the time of giving the notice? Do they receive back any sales commission paid? Who must return this money to the purchaser? The issuer and/or the dealer (which received the sales commission)? These questions remain unanswered even with the additional concepts written into CMRA Regulation 11-501.

b. **Section 139 -** This section applies if the purchaser acquires a security after the prospectus for a security in continuous distribution has expired. Many of the same questions as above apply here – except in this instance it is clear (from paragraph (2)) that the dealer is required to refund any sales charges.

c. **Section 140 -** the similar section in the Ontario Securities Act is rightly criticized as giving the savvy investor a "put" right to ostensibly get out the purchase of a mutual fund security if the NAV of the securities have increased in value since the date of acquisition (this right is in addition to the standard right to redeem a mutual fund at NAV at the date of redemption). This section appears to be unnecessary in light of the long-standing criticism by the industry, as well as the proposals of the CSA that investors in mutual funds receive the prescribed disclosure document in advance of any trade. What is this rescission right designed to accomplish? These questions must be addressed even with the additional material set out in CMRA Regulation 11-501.

13. **Section 141 –** On further consideration of this section, we consider this section requires revision. This section would enshrine in legislation the "cooling off" rights that scholarship plan organizations have long provided their subscribers and that are suggested in NP 15. We have no issue with this concept. However, subsection (2) would, in essence, make the plan a "guarantor" of the amounts paid into the plan for the first 60-days – and a plan and its manager would then be well-advised to keep any moneys paid into the plan in escrow and held in cash or near-cash investments for the first 60-days, so that they will be able to repay the moneys contributed, inclusive of sales charges and fees, in case the subscriber wishes to rescind the contract. This does not seem to be an appropriate result for subscribers, given that they will lose any investment opportunity for the first 60-days if they do not decide to rescind the purchase. We recommend that the CMA simply enshrine the concept of a cooling off period for a scholarship plan, with subsection (2) requiring

repayment of the then value of any moneys paid into the Plan, as well as sales charges and fees paid to the plan manager and/or dealer. This would make rescission of scholarship plans similar to the rescission rights for mutual funds (section 140 of the CMA).

No time periods should be provided in the CMA, so as to make the CMA "platform" legislation in this area, as with the other areas covered by the CMA. CMRA Regulation 11-501 (section 20) should be modified and rethought. We consider that the 60-day time period should be rethought and made shorter, which we note is well in excess of other rescission time periods applicable to the purchase of any other type of security.

It should also be clarified that scholarship plan subscribers have ONLY this right of rescission – in that it cannot be combined with the other rights set out in other sections of the CMA.

14. **Section 205 –** Our December 2014 comment still applies**.** We strongly object to the proposal that the Authority can publish proposed changes to a previously proposed regulation with as little as a 30-day comment period. This is woefully inadequate time for market participants to consider the changes, and therefore we consider this comment period to be virtually meaningless, particularly if notices of changes happen to be published for comment during summer and holiday months (as they have often been done in the recent past). We also consider that the Authority should be required to publish a notice of the comments received on its prior proposals and its response to all of the comments (not just those the Authority considers significant). Given the framework structure of the CMA, it is vital that the Authority be held accountable and give capital markets participants sufficient information and time to consider its proposed regulations.

15. **Section 212 –** We appreciate the change from the previously proposed 30-day time period for industry comment on Chief Regulator's policy statements, to 60-days, although subsection (4) must establish an additional 60-day time period for changes, for the same reasons as we have provided above. We consider this vital for the appropriate accountability of the Authority. We also consider it vital that the Chief Regulator be required to describe the policy rationale for any policies and point to specific rules and legislation that the policy guidance is designed to fit with. All too often in recent years, in our view, the members of the CSA have come out with guidance that is not published for comment and that expands on and is clearly rule-like or substantially supplements existing rules and regulations. We consider that this is essential for the proper operation and accountability of the Authority.

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BLG lawyers providing comments on the CMA:

- Rebecca Cowdery (focus on investment funds and registrant regulation)

  416-367-6340 rcowdery@blg.com

- Michael Burns (focus on investment funds and registrant regulation)

  416-367-6091 mburns@blg.com

- Philip Tardif (focus on public reporting issuers (non-investment funds)

  416-367-6060 ptardif@blg.com

- Michael Taylor (focus on registrant regulation)

  416-367-6176 mtaylor@blg.com

Comments on CMRA Regulation 11-501 ***Definitions, Procedure, Civil Liability and Related Matters***

1. **Section 7 -** We very much support the stripped down and simplified procedure for "closely held reporting issuers" to cease to be reporting issuers. We recognize this as the BCSC's current procedure and were very pleased to see it as the standard for the CMRA.

2. **Sections** 18-20 – Please see our comments on the various related provisions of the CMA regarding rescission.

BLG Lawyers providing comments on Regulation 11-501

Rebecca Cowdery

416-367-6340 rcowdery@blg.com

Comments on CMRA Regulation 31-501 *Registration Requirements, Exemptions and Related Matters*

1. **Part 3 -** The registration exemptions for financial institutions specified in section 35.1 of the *Securities Act* (Ontario) (the OSA) and subsection 31(a) of the *Commodity Futures Act* (Ontario) have not been carried forward. Part 4 of OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*, which provides for certain exemptions for trades by a financial intermediaries or Schedule III banks, has also not been carried forward. The governments state that, while no specific exemption is included, financial institutions may nonetheless be able to use a number of registration exemptions contained in the proposed instruments and regulations or apply for an exemption under section 94 of the CMA.

   While we would have thought that such a significant change would merit some discussion of a policy rationale, the governments do not provide a policy reason or rationale for this change. This is all the more true where these entities are subject to regulation by other regulatory authorities, such as OSFI. The governments have stated that financial institutions which currently rely on the financial institution exemption in Ontario will have to analyze their business activities to determine whether another exemption is available or whether to apply to register (or apply to obtain a discretionary exemption) to continue to engage in such activities. Presumably this analysis will be a time consuming and costly endeavour, all the more reason why some policy rationale should have been provided, and consideration given as to why and how financial institutions rely on the existing exemptions and why these exemptions should continue.

2. **Section 8 –** Our comment on the CMA regarding the definition of “investment fund manager” is relevant here. We acknowledge the response to our December 2014 comment provided in the October 2015 summary of comments and responses (comment 17). There is no explanation of the policy decision for bringing all IFMs under the jurisdiction of the CMRA, which we find to be very disappointing. We have significant experience in the impact of this model of regulation has had on international fund managers proposing to distribute international funds in Canada (under available prospectus exemptions) and now these IFMs will need to register with the CMRA, with Quebec and Newfoundland and Labrador, but not in the remaining provinces and territories of Canada. We do not see how this is an improvement on the existing bifurcated system, particularly since the IFM is, in actual fact, NOT acting as an “investment fund manager” in the CMRA provinces and territory. We provided extensive commentary on the various CSA members’ split decision in how to regulate investment fund managers in Canada in the various comment periods for Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers* and Multilateral Policy 31-202 *Registration Requirement for Investment Fund Managers*. We consider that the “rest of Canada’s” approach to such regulation inherent in Multilateral Policy 31-202 to be much more logical and consistent with reality and regulatory policy and reach and we urge the governments to reconsider the approach with the CMA and the CMRA Regulation.

BLG
Borden Ladner Gervais

BLG Lawyers providing comments on Regulation 31-501

Rebecca Cowdery

416-367-6340 rcowdery@blg.com

Michael Burns

416-367-6091 mburns@blg.com

Michael Taylor

416-367-6176 mtaylor@blg.com

Comments on CMRA Regulation 41-501 ***Prospectus Requirements and Exemptions***

1. **Section 6(4), Part 2** We note the recent changes to IIROC Dealer Member Rule 3400 relating to the publication of research reports. See http://www.iiroc.ca/Documents/2015/5a5e87de-1084-45bd-ad57-d63b3166419b_en.pdf. We submit that the Section 6(4) and Dealer Member 3400 (Requirement 14) should be harmonized such that the publication of a research report by an IIROC dealer member permitted under the IIROC rules or under Regulation 41-501 should not conflict with the restrictions contained in the other.

2. **Parts 5 and 6** We note that it is proposed to include certain prospectus exemptions in Regulation 41-501, while others would be provided in a National Instrument (which we assume would be NI 45-106). We suggest including all prospectus exemptions in one National Instrument, rather than having certain exemptions in Regulation 41-501 and others in a National Instrument.

3. **Section 7, Part 3** We note the recommendation of the Uniform Law Conference relating to trust indenture legislation. http://www.ulcc.ca/en/component/jifile/?filename=images/stories/2010_pdf_en/2010ulcc0004.pdf. We support the attempts of the CMRA to harmonize the legislation as set out in Part 3 of Regulation 41-501. However, we note that one of the recommendations of the ULCC was that: “Blanket (or class) exemptions should be created for bond issues covered primarily by the legislation of other jurisdictions which have comparable laws in place.” We suggest that section 7 include an express exemption for bond issues which comply with prescribed laws.

4. **Section 9** – We are delighted to see that the CMRA will adopt a uniform Capital Accumulation Plan exemption. We would be pleased to discuss any aspect of the existing blanket orders to determine if amendments should be made to it to modernize it and also, particularly to include identical exemptions for the “overflow” savings plans that most plan sponsors rely on today. We believe some clarifications and refinements could usefully be made to the existing exemptions and would be very pleased to discuss this with the applicable staff.

BLG Lawyers providing comments on Regulation 41-501

Philippe Tardif

416-367-6060 ptardif@blg.com

Rebecca Cowdery (comment 4)

416-367-6340 rcowdery@blg.com

Comments on CMRA Regulation 71-501 *International Issuers and Securities Transactions with Persons Outside the CMR Jurisdictions*

1. **CMRA Policy 71-601**. We support the aim of the policy to provide a harmonized approach to distributions outside of the CMR Jurisdictions. In order to enhance the clarity of the Policy, we suggest that the second paragraph of Part 2 be amended to provide that an issuer is required to comply with the prospectus requirements, "unless an exemption therefrom is available." We believe this is consistent with the commentary which appears later in the Policy. Moreover, we submit that the reference to "The onus is on an issuer and its counsel" in section 1 of Part 2 should be amended to delete the reference to "and its counsel" as the CMRA should not impose obligations on advisers to an issuer in these circumstances. However, it is difficult to properly comment on this provision, subject to a review of the exemptions that will be available within the CMRA jurisdictions. We strongly urge a much more harmonized approach be taken with respect to prospectus exemptions. The current continuing variations of the same type of exemption is not optimal and we consider should be streamlined before the CMRA becomes operational.

2. We observe that CMRA Policy 71-601 will operate for distributions within Canada and may serve to add additional friction to these distributions. We consider further discussion as to the need for this policy concerning distributions within Canada should be carried out.

BLG Lawyers providing comments on Regulation 71-501

Philippe Tardif

416-367-6060 ptardif@blg.com

Rebecca Cowdery

416-367-6340 rcowdery@blg.com

Comments on CMRA Regulation 81-501 *Investment Funds*

1. **Section 9** - We recognize that this section is still being considered as part of the interface between the CMRA jurisdictions and the rest of Canada. However, we strongly urge the CMRA to drop any notion that an entity with an existing exemption must “give notice that the exemption is to be relied upon under this Regulation”. This would seem to be an unduly bureaucratic regulatory burden. Exemptions granted before the CMRA should continue to operate as of right in the CMRA jurisdictions, particularly since the CMRA jurisdictions will continue to have the same records they had when they operated as a separate provincial regulatory agencies.

2. **Part 2** – We are curious as to the reason for this provision. Won’t all documents be filed on SEDAR, which will continue to operate after the CMRA and the System is established? And if not, why would these documents need to be filed with the CMRA if there is not another reason for these documents to be filed?

BLG Lawyers providing comments on Regulation 81-501

Rebecca Cowdery

416-367-6340 rcowdery@blg.com

Michael Burns

416-367-6091 mburns@blg.com

TOR01: 6157355: v3