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BY EMAIL

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Dear Sirs/Mesdames:

Re: Nova Scotia Securities Commission Policy 45-601 – Community Economic Development Investment Funds and Blanket Order No. 45-521 (“collectively, Policy 45-601”)

The Canadian Advocacy Council¹ for Canadian CFA Institute² Societies (the CAC) appreciates the opportunity to comment on proposed Policy 45-601.

As a general comment, the CAC is supportive of the efforts of the Nova Scotia Securities Commission to facilitate reinvestment into the local economy by retail investors who want to invest in businesses within their own communities. However, it is important that the interests of local businesses in accessing capital more quickly and easily do not overshadow the importance of investor protection and transparency in the capital markets. We have a number of investor protection concerns with respect to an exemption available solely to Community Economic Development Investment Funds (“CEDIFs”) from the investment fund manager requirement, as outlined below.

¹The CAC represents the 13,000 Canadian members of CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at <http://www.cfasociety.org/cac>. Our Code of Ethics and Standards of Professional Conduct can be found at <http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx>.

² CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 113,000 members in 140 countries and territories, including 102,000 CFA charterholders, and 137 member societies. For more information, visit <http://www.cfainstitute.org/>.

It is noted in the request for comments that the requirements in Nova Scotia securities laws relating to the registration of investment fund managers were implemented on September 28, 2009, subsequent to the creation of many existing CEDIFs. However, the new requirement to register as an investment fund manager in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* was equally applicable to other investment funds of all sizes across the country when it was implemented. In the July 17, 2009 notice confirming the implementation of the registration requirement, the CSA noted that the investment fund manager category is intended to ensure that investment fund managers have sufficient proficiency, integrity and solvency to adequately carry out their functions. We recognize that due to the unique nature of CEDIFs, they may have difficulties meeting the requirements met by investment fund managers. However, we are of the view that additional conditions to any exemption from the IFM requirements for these unique funds should be put in place in order to maintain appropriate investor protection for what may be a large, potentially unsophisticated group of investors with limited investment experience.

The CAC would like to comment on the following specific topics:

Investment Limits

We understand that one of the conditions in Policy 45-601 would limit the amount of capital raised by the CEDIF under each offering to \$3 million, and in the aggregate (together with any affiliated CEDIF) to not more than \$6 million. In addition, the CEDIF and affiliated CEDIFs may raise no more than \$10,000 per beneficial investor per calendar year in the aggregate, unless the investor is an accredited investor or an officer, director or promoter of the CEDIF.

We note that the \$6 million maximum figure appears high, based on the \$10,000 maximum amount that is proposed to be permitted to be invested on an individual basis. In order to reach the maximum, 600 non-accredited investors would be required, and based on a review of publicly available information, it would appear as if it is more likely that each CEDIF would attract 30-100 investors on average.

We would like to note that in the CAC's opinion, simply being an accredited investor is not in all cases a proxy for investor sophistication, better access to information, and improved investor protection. As the CAC noted in its previous comment letter to the CSA with respect to their earlier review of the minimum amount and accredited investor exemptions, we do not believe that possessing investable assets above a certain threshold implies sophistication, lottery winnings and inheritances being just two examples of how that threshold could be reached by unsophisticated investors. We do not believe that either an asset test or an income test is sufficient to determine which investors have better access to information and are sophisticated enough to not require as much protection as others. We believe that a better approach at determining the appropriate limit for a permitted

investment in any specific exempt distribution would be to limit the investment to a small percentage (up to 10%) of an investor's net assets, excluding their primary residence.

We understand that there can be a number of CEDIFs at any one time trying to raise money from the public, and are concerned that absent a requirement, in all cases, for an additional limit to be placed on an individual investor's ability to purchase securities of any CEDIF in one year, it will be possible for an individual investor to invest a substantial portion of their net worth in one or more unaffiliated CEDIFs. We recommend that if the \$10,000 limit per investor is retained in the policy, it should specify clearly that the limit is the maximum that can be invested in any CEDIF under this exemption, per investor, per year.

Changes to Investments

One of the alternative proposed conditions which would exempt CEDIF investment managers from the IFM requirements would be if the CEDIF offering document specified the investments that the CEDIF would make (or has made), and require security holder approval for any subsequent changes to the investments. While such a condition would help ensure that investors received what they bargained for when purchasing securities of the CEDIF, it would not help ensure that the management of the CEDIF had any investment fund or prior business or financial experience, and thus the ability to properly disclose the risks or conflicts related to the investments made by the CEDIF to investors.

We recommend that the requirement to have at least 50% +1 votes in order to change investments of an exempt CEDIF be increased to a 2/3 majority vote. This would ensure such changes would be harder to implement and may require more discussions with shareholders.

Disclosures

The information proposed to be included in the offering document with respect to the investments made by the CEDIF will be helpful to investors. We would suggest that more information be required to be provided with respect to the experience and background of every officer, director and promoter of the CEDIF as well. While it is a form requirement to provide information on details of any experience officers, directors or other key personnel have in managing other businesses in the start up or development stage, their history with any other CEDIF in particular should be required to be described. To the extent the promoters of the CEDIF promote other CEDIFs, it would be helpful for potential investors to know statistics with respect to the success of those other funds.

With respect to the prescribed notice to be provided to investors, we agree that it will be important for investors to be made aware that the exempt CEDIF will not be required to comply with the requirements of an investment fund manager and therefore they will not have the protections of the requirements and standards imposed on registered investment fund managers. To be meaningful, we agree with the proposals that the notice should go on to provide additional details with respect to those requirements and standards, particularly

those related to solvency. We believe it would be useful if some of the investment fund manager protections that would not apply to the exempt CEDIFs were explained in plain language and more detail, such as the lack of minimum insurance and working capital requirements.

While disclosure is required to be provided with respect to the number of shares beneficially owned by officers and directors as a group, the amount of investment made by promoters as well would be useful information given the unique small nature of CEDIFs.

If there are statistics available with respect to the number of CEDIFs that have returned funds to investors and/or paid out a material amount of dividends to investors, or conversely, that have not returned any funds to investors, the offering document for the CEDIF should be required to contain a clear discussion to that effect. If such statistics are not available, we believe an effort should be made to compile them, based on a reasonably long period of available history since 1999 and a large enough sample of existing funds.

While past performance is not an indication of future performance, it could be helpful for investors in general if there was an easily accessible information center where investors could obtain information on the success rates of all CEDIFs, as they may provide some context and information on the potential success rates of similar projects funded by newly formed CEDIFs. If the managers of the funds do not have any solvency or proficiency requirements, then the solvency/financial position of the CEDIFs run by those managers or affiliates in the past take on even more importance, and those managers could be required to provide corporate financial information in summary form to potential investors.

Compliance

While the proposed Policy 45-601 provides that it is the responsibility of the CEDIF to ensure that it is in compliance with Nova Scotia securities laws, including the policy, at all times, the CAC believes that given the nature of these funds and the proposed exemption from the IFM requirements, enhanced regulatory supervision of these funds should be required. Given the fact that the proposed exemption relieves the CEDIFs of both the requirement to appoint a compliance officer of an investment fund manager and of undergoing Commission compliance reviews of the same, we believe some active continuing involvement by the Commission subsequent to the initial review of the offering document is necessary to help ensure continued compliance by the CEDIFs and thus help ensure investor protection.

Concluding Remarks

At a minimum, we would suggest that all of the above proposed conditions should be required in order for CEDIFs to be exempted from the investment fund manager registration requirements. We would recommend that the limit per beneficial investor be tied to that investor's net worth or net assets, and should be imposed on the purchase of any CEDIF in a calendar year.

The investor should also have to sign a statement that they have not exceeded their investment limit in the offering (through the use of nominees, etc.).

It will be very important for the Nova Scotia Securities Commission to monitor the use of this exemption. Timely and effective enforcement will be important to mitigate the potential risks. We are also of the view that the regulators should review the sales proficiency requirements for dealers permitted to sell CEDIFs and impose additional requirements with respect to such sales. The practice of unlicensed salespersons selling CEDIFs, which we understand is common, should be closely monitored, as well as the suitability of the products being sold to investors.

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *Ada Litvinov*

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