January 10, 2022

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Dear Sirs/Mesdames:

RE: OSC Staff Notice 33-753 - OSC Consultation on Tied Selling and other Anti-Competitive Practices in the Capital Markets

About the Alternative Investment Management Association (AIMA)

AIMA was established in 1990 as a direct result of the growing importance of alternative investments in global investment management (covering primarily hedge funds, private credit, liquid alternative funds and now also digital assets). AIMA is a not-for-profit international educational and research body that represents practitioners in alternative investment funds, futures funds and currency fund management – whether managing money or providing a service such as prime brokerage, administration, legal or accounting.

AIMA's global membership comprises approximately 2,100 corporate members in more than 60 countries, including many leading investment managers, professional advisers and institutional investors and representing over $2.5 trillion in assets under management. AIMA Canada, established in 2003, has approximately 150 corporate members.

Under our pillars of Advocacy, Education and Communication, the objectives of AIMA are to provide an interactive and professional forum for our membership; act as a catalyst for the industry's future development; provide leadership in sound practices; enhance industry transparency and education; and liaise with the wider financial community, institutional investors, the media, regulators, governments and other policy makers.

The majority of AIMA Canada members are managers of alternative investment funds and fund of funds. Most are small businesses with fewer than 20 employees and $50 million or less in assets under management, though some are some of our country's largest traditional asset managers. The majority of assets under management are from high-net-worth investors and are typically invested in pooled funds managed by the member.

Investments in these pooled funds are sold under exemptions from the prospectus requirements, mainly the accredited investor and minimum amount investment exemptions. Manager members also have multiple registrations with the Canadian securities regulatory authorities: as Portfolio Managers, Investment Fund Managers, Commodity Trading Managers and in many cases as Exempt Market Dealers. AIMA Canada's membership also includes prime services, custodial, accountancy and law firms with practices focused on the alternative investments sector.

For more information about AIMA Canada and AIMA, please visit canada.aima.org and www.aima.org.

Comments

We are writing in response to the above noted Notice. AIMA supports the objective of reviewing the practice of tied selling and addressing concerns if certain commercial lenders may be engaging in improper practices that may impede competition. We are in favour of a level playing field and note that our members that are registrants are subject to prohibitions on tied settling and tied selling under National Instrument 31-103. In addition, AIMA is very supportive of sound practice and encouraging competition, alongside ensuring access to independent product.

We are commenting in response to questions 7 & 8 set out in the Notice, and wish to flag other regulatory and market factors that may impede effective capital formation as follows:

(a) access to mixed product shelf space;
(b) access to prime brokerage services, including "designated broker" services for exchange traded funds ("ETFs");
(c) the requirement for a single Canadian custodian; and
(d) ETF market maker requirements.

Access to Mixed Product Shelf Space

A theme that has been accelerating in advance of and in accordance with the Client Focused Reforms has been the increasing difficulty for boutique, independent fund manufacturers and emerging alternative fund managers generally to distribute alternative investment products to retail investment advisors at broker dealer firms. Commonly cited challenges that managers face with retail distribution include the overlay of internal risk ratings at IIROC dealers, the need to specifically meet various criteria before securing fund approval for platform distribution, dealer recommendation lists for funds, additional subscription documentation, and increased use of model portfolios and managed accounts at dealer firms, for example.

The news in September 2021 that "several of Canada's largest banks have halted salefs of third-party investment products from their financial planning arms as new regulatory rules will soon require advisers to have deeper knowledge of the funds they recommend to clients"[1] is an example of the unfortunate, unintended impact of the Client Focused Reforms, and representative of the retail distribution struggle that many boutique, independent alternative asset managers experience versus their local traditional asset manager peers.

Access to Prime Brokerage Services

Investment funds are generally subject to custodian requirements under National Instruments 31-103 and 81-102. For efficiency, fund managers may prefer to engage a qualified prime broker to act as a custodian for hedge funds and alternative mutual funds. In addition to the requirement for a qualified custodian, we note that ETFs, by virtue of the way they are structured and operate, also require a designated broker to supply and remove ETF shares from the market. These regulatory and functional requirements create a quasi-monopoly environment for the provision of these services by qualified institutions. This can result in barriers to new entrants where a relationship with the organization is factored into decision-making or such institutions impose conditions on account opening such as high minimum capital requirements to gain access to a platform or a full suite of services such as access to research.

We support recent exemptive relief granted by the OSC to permit investment funds to appoint more than one custodian. The flexibility to engage prime brokers as custodians increases operational

[1] https://www.theglobeandmail.com/business/article-banks-halt-sales-of-third-party-mutual-funds-to-prepare-for-rule/

efficiency and reduces execution risk and costs for an investment fund. We encourage the OSC to codify this exemption from the "single custodian requirement" as soon as practicable in a manner to provide relief from such requirement applicable to investment funds under National Instruments 31-103, 41-101 and 81-102.

The requirement for a single "Canadian custodian" under National Instruments 41-101 and 81-102 also limits choice for Canadian managers of prospectus qualified funds and access by qualified foreign custodians to such issuers. These qualified foreign custodians are the same entities that are qualified to hold portfolio assets outside of Canada in the capacity of sub-custodian. We submit that the rationale for the engagement of a "foreign custodian" under National Instrument 31-103 applies to all investment funds and the OSC should move to codify this flexibility for all investment funds. It is necessary for the OSC and other securities regulators to take the initiative to codify this particular amendment due to the fact that qualified foreign custodians lack standing to request exemptive relief on their own behalf because the requirement to retain a qualified custodian is a manager obligation.

ETF Market Maker Requirements

ETFs require market makers to provide initial listing seed capital when an ETF is looking to list on an exchange. The market makers are the same financial institutions that perform designated broker services, limiting the options for ETF providers when looking to launch a new ETF. There is a minimum C$1 million listing requirement. With the number of ETFs being launched increasing each year, this can place capital strain on the market makers and based on the qualitative feedback from some of our members, this can result in these firms looking to make sure their capital is being allocated to ETF providers where they have relationships with other areas of the organization since seeding and market making are not functions that are directly paid for. This need for an ETF provider to have a relationship with the organization and the unwritten agreement that trading will be done with their trading desk, limits new ETF providers coming to market from other jurisdictions or start-up organizations.

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We appreciate the opportunity to provide the OSC with our views on this consultation. Please do not hesitate to contact the undersigned with any comments or questions that you might have. We would be pleased to meet with you to discuss our comments and concerns further.

Yours truly,

ALTERNATIVE INVESTMENT MANAGEMENT ASSOCIATION CANADA