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Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

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c/o Anne-Marie Beaudoin
Corporate Secretary
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Dear Sirs/Mesdames:

Re: AIMA Canada's Comments on Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* relating to Dispute Resolution Services

This letter is being written on behalf of the Canadian National Group (**"AIMA Canada"**) of the Alternative Investment Management Association (**"AIMA"**) and its members to provide our comments to you on the Canadian Securities Administrators' (**"CSA"**) proposed amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**"NI 31-103"**) and Companion Policy 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the **"Companion Policy"**) relating to the requirement to provide an independent dispute resolution or mediation service (the

"**Proposal**").

AIMA was established in 1990 as a direct result of the growing importance of alternative investments in global investment management. AIMA is a not-for-profit international educational and research body that represents practitioners in hedge fund, futures fund and currency fund management – whether managing money or providing a service such as prime brokerage, administration, legal or accounting. AIMA's global membership comprises over 1,300 corporate member firms (with over 6,000 individual contacts) in more than 50 countries, including many leading investment managers, professional advisers and institutional investors. AIMA's Canadian national group, established in 2003, now has over 100 corporate members.

The principal aims of AIMA are to provide an interactive and professional forum for our membership and act as a catalyst for the industry's future development; to be the pre-eminent voice of the industry to the wider financial community, institutional investors, the media, regulators, governments and other policy makers; and to offer a centralized source of information on the industry's activities and influence, and to secure its place in the investment management community.

For more information about AIMA Canada and AIMA globally, please visit our web sites at www.aima-canada.org and www.aima.org.

This comment letter has been prepared by a working group of the members of AIMA Canada, comprised of managers of hedge funds and fund of funds, and accountancy and law firms with practices focused on the alternative investments sector.

Comments

AIMA Canada supports the objective of ensuring that clients of all dealers and advisers have access to an independent dispute resolution or mediation service in order to resolve any complaints that may arise.

However we have major concerns over the Proposal as outlined. We have reviewed the Proposal carefully and have outlined below our comments for your consideration.

Time Period to Make a Complaint

The Proposal allows for a complaint to be raised up to 6 years after the date when the client knows or reasonably ought to have known of the trading or advising activity at issue. In our opinion this is far too long.

In our opinion the time limit on a complaint should be determined with reference to the date at which the client was provided information by the registrant with respect to the trading or advising activity, e.g. through the minimum required quarterly statement. Given the client reporting requirements imposed on registrants by NI

31-103, we suggest that a limit of 3 to 6 months from the date of receipt of information reporting the activity, as distinct from the date on which the activity occurred, be imposed. This reinforces investor responsibility for their investments and reduces the potential use of hindsight as the basis for a complaint.

Imposition of a single service provider

We do not believe that it is appropriate for the CSA to attempt to impose a single service provider on the market. This is contrary to the general objective or mandate of regulators to foster fair and efficient capital markets. Mandating only one provider eliminates the effect of competition in the market in ensuring that efficient and cost effective services are provided to investors.

We note that there are various alternatives available in the market. For example, AIMA Canada has engaged in discussions with the Portfolio Management Association of Canada (PMAC) with respect to their proposed structure, which involves the ADR Institute of Canada, a non-profit organization.

The Proposal also states (on page 3) "A registered firm is only required to make one dispute resolution or mediation service available at its expense for each complaint." In actuality however registrants will be required to have more than one service available to allow for situations where OBSI is unwilling or unable to deal with a complaint under their guidelines, particularly when the dollar amount exceeds the threshold of $350,000 (see further comments below with respect to the AIMA Canada client base). This will increase costs.

Instead of requiring one service provider which has a limited mandate we strongly recommend that the CSA follow the federal model of approving external complaints bodies that registrants propose to use, which may be entities other than OBSI. We believe that PMAC's arrangement with the ADR Institute meets all of the objectives of NI 31-103.

OBSI limitations and issues

In our opinion there are various issues with the selection of OBSI as the sole provider of dispute resolution and mediation services. These include the following:

a) *Claim Limits* – The Proposal indicates that OBSI would not deal with potential claims in excess of $350,000. AIMA Canada members are typically dealing with sophisticated high net worth or institutional investors. For these clients claims will likely, in many cases, fall outside the above limit and thereby require the registrant to find or have in place an alternative service.

b) *Usage* – As noted above the type of clients that our members typically deal with are sophisticated investors with multiple investment management options available to them. If they are dissatisfied with a manager they will normally take action before the issue gets to a level of requiring dispute

resolution or mediation. As a result we believe that the service will rarely be used. Based on anecdotal evidence the level of complaints received by our members that must be addressed through a formal process is virtually nil. Given this, and (a) discussed above, we believe that our members would almost never use OBSI.

c) *Expertise and Effectiveness* – We note that significant concerns over OBSI's expertise have been publicly raised over the last few months, to the extent that 2 of Canada's banks have opted out of using OBSI, notwithstanding that they were founding participants in 1996. Other organizations have also publicly raised issues. The Proposal notes that OBSI is currently reviewing its processes and corporate governance structure and the CSA is considering what its role in overseeing OBSI should be. Until such issues are satisfactorily resolved and the CSA's role is determined we respectfully submit that mandating usage of OBSI is premature. It is our understanding that these concerns were contributing factors to the federal approach of allowing multiple approved providers.

Given the above we believe that the selection of OBSI as the sole mandated service provider is inappropriate at this time. Should the CSA proceed with mandating the use of OBSI, a time limit or "sunset clause" should be included in NI 31-103 requiring a review after 2 years.

Costs

The Proposal states that OBSI's current funding model requires that all participating firms pay a levy based on their size or volume of business. However, it does not state how the levy is currently determined (nor could we find it on the OBSI website). In addition, the Proposal states that the CSA is working with OBSI to develop a fee model that would be fair to registrants required to use the service.

We have two major concerns:

a) In our opinion any potential costs that are to be imposed on registrants must be clearly outlined for public comment before implementation. As the CSA is well aware the industry is extremely competitive and any additional costs should be minimized. Implementing the Proposal while fee negotiations are underway is unacceptable.

b) As outlined above we believe that our member's use of the service, if mandated, would be virtually nil. Thus if OBSI's fee model of an annual levy is maintained our members would be paying a fee for a service that is not used, nor permitted to be used (e.g. when dollar amounts exceed the limit). In such a case the imposition of a fee is unfair and unacceptable. Any fees that may be required must be on a per case or actual usage basis, similar to the PMAC arrangement with the ADR Institute.

Conclusion

In summary we have the following key recommendations:

a) The time period of 6 years allowed for a complaint to be made is too long. We believe that 3 to 6 months is more appropriate.

b) Mandating the use of a single service provider is inappropriate in today's competitive environment. The approach that the federal government is taking with respect to the banks of permitting multiple approved service providers should be followed.

c) The implementation of the proposal should be delayed until the both the governance issues and fee model have been addressed between the CSA and OBSI and issued for public comment.

d) If the use of OBSI is to be mandated, a review by the CSA with the industry of the effectiveness of the process after 2 years should be required.

e) Given our expectation that AIMA Canada members will rarely, if ever, use the service in light of the size restrictions etc., any fee requirements must be based on usage as opposed to size or volume of business.

We appreciate the opportunity to provide the CSA with our views on the Proposal. Please do not hesitate to contact the members of AIMA set out below with any comments or questions you might have. We would be happy to meet with you in order to discuss our comments further.

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Yours truly,

ALTERNATIVE INVESTMENT MANAGEMENT ASSOCIATION

By:

Ian Pember
On behalf of AIMA Canada and the Legal & Finance Committee