



Alternative Investment Management Association - Canada

Chairman

Gary Ostoich
Tel. (416) 368-0027

Deputy Chairman

Eamonn McConnell
Tel. (416) 669-0151

Legal Counsel

Michael Burns
Tel. (416) 865-7261

Treasurer

Chris Pitts
Tel. (416) 947-8964

Secretary

Andrew Doman
Tel. (416) 775-3641

General Manager

Corey Goldman
Tel. (416) 453-0111
Fax. (416) 322-9074
cgoldman@aima-
canada.org

www.aima-canada.org

December 22, 2009

Ontario Securities Commission
c/o John Stevenson, Secretary
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8

Dear Sirs/Mesdames:

Re: AIMA Canada's Comments on Proposed Amendments to Ontario Securities Commission Rule 13-502 Fees

This letter is being written on behalf of the Canadian chapter ("AIMA Canada") of the Alternative Investment Management Association ("AIMA") and its members to provide our comments to you on the Ontario Securities Commission's ("OSC") proposed amendments to Ontario Securities Commission Rule 13-502 *Fees* and related forms (the "Rule").

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 1,280 corporate members, throughout 49 countries, including many leading investment managers, professional advisers and institutional investors. AIMA's Canadian chapter, established in 2003, now has more than 70 corporate members.

The objectives 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, 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.

Alternative Investment Management Association - Canada
P.O. Box 786, Station "A", Toronto, ON, M5W 1G3

Tel. 416-453-0111 Fax. 416-322-9074 Email: cgoldman@aima-canada.org Internet: www.aima-canada.org



Alternative Investment Management Association - Canada

Comment 1

The Rule currently contemplates that an unregistered investment fund manager is required to pay an annual participation fee, calculated with reference to its specified Ontario revenues, in accordance with Appendix B of the Rule. We understand that staff of the OSC takes the view that unregistered investment fund managers that have no net income are considered to have specified Ontario revenues of “under \$500,000” and are required to pay a fee of \$870.

Managers of alternative investments (as well as many managers of other investment funds) often structure their domestic investment funds as limited partnerships. Liability concerns surrounding limited partnership law in many Canadian jurisdictions have resulted in investment funds structured as limited partnerships being constituted with separate (but affiliated) general partners for each investment fund. The general partners of these investment funds generally enter into a management agreement with an investment fund manager/portfolio manager in which they completely delegate investment advisory and management services to the registrant. The registrant pays an annual participation fee in accordance with the Rule.

In addition, investments by Canadian investors in off-shore alternative investment vehicles are frequently structured to be made through an investment fund governed by the laws of a Canadian jurisdiction (a “feeder fund”), whose sole investment objective is to invest in the off-shore fund. The operations of a feeder fund, although minimal, are customarily managed by a manager, usually related to the off-shore fund or its advisors. Often the feeder fund is created to accommodate one or a few Canadian investors or to achieve certain tax objectives. The Rule requires that each of the adviser of the feeder fund, the investment fund manager of the feeder fund and the investment fund manager of the off-shore fund pay participation fees. The investment fund manager of the feeder fund is paid only a nominal fee for its services.

In our view these circumstances result in a duplication of fees. Given that the companion policy to National Instrument 31-103 *Registration Requirements and Exemptions* explicitly acknowledges that general partners of investment funds structured as limited partnerships may avoid the requirement to register as an investment fund manager by delegating their investment fund manager function to a registered investment fund manager, it is our view that there is no public policy objective achieved by imposing a filing obligation and the requirement to pay a fee on unregistered investment fund managers: (i) who delegate all registerable activity to a registrant who does pay a participant fee; or (ii) who are intermediaries in a structure where another unregistered investment fund manager does pay a participant fee. In these circumstances, it is our view that the general partner is not



Alternative Investment Management Association - Canada

an investment fund manager and the Rule should be amended to clarify this.

In the alternative, we urge the OSC to reconsider whether it should be charging fees to unregistered investment fund managers at all, given that investment fund managers are required to be registered if the investment fund is resident in Canada. When the Rule was introduced, OSC Rule 35-502 – *Non Resident Advisers* “looked-through” to the Ontario resident investors in a non-resident investment fund to apply the adviser registration requirement to the non-resident advisers to the investment fund. With the implementation of NI 31-103, this concept is no longer being applied to advisers, and advisers to non-resident investment funds sold to Ontario residents are no longer required to be registered or exempt from registration. As well, when the Rule was introduced, investment fund managers were not required to be registered.

It is our view that if the relationship of the investment fund manager and adviser of a non-resident investment fund (whether resident in another Canadian province or territory or in another jurisdiction) is not sufficient to trigger a registration requirement, the requirement to pay a fee should not be triggered either. The entity that has participated in the Ontario capital markets is the investment fund itself and the investment fund will pay a fee when it files a Form 45-106F1.

Further to the comments above, corresponding amendments should be made to item B(2)(b) of Appendix C – Activity Fees

Comment 2

Section 3.4(3) of the Rule provides for a number of deductions which can be made from a registrant’s gross revenues in determining its specified Ontario revenues. These deductions include:

“(d) advisory or sub-advisory fees paid during the previous fiscal year by the person or company to a registrant firm, as “registrant firm” is defined in this Rule or in Rule 13-503 (*Commodity Futures Act*) Fees;”

Registrant firm is defined as follows:

“registrant firm” means a person or company registered under the Act as a dealer, adviser or investment fund manager;”

NI 31-103 provides that a firm can provide advisory services on a registration exempt basis, as an exempt international adviser to permitted clients as defined in NI 31-103, which include an investment fund if one or both of the following apply:

Alternative Investment Management Association - Canada
P.O. Box 786, Station “A”, Toronto, ON, M5W 1G3

Tel. 416-453-0111 Fax. 416-322-9074 Email: cgoldman@aima-canada.org Internet: www.aima-canada.org



Alternative Investment Management Association - Canada

- “(i) the fund is managed by a person or company registered as an investment fund manager under the securities legislation of a jurisdiction of Canada;
- (ii) the fund is advised by a person or company authorized to act as an adviser under the securities legislation of a jurisdiction of Canada;

Section 3.1(1) of the Rule requires the exempt international adviser to pay a participation fee. Accordingly, Section 3.4(3)(d) of the Rule should be amended to permit the deduction of advisory or sub-advisory fees paid during the previous year to an unregistered exempt international firm.

Comment 3

The drafting in subsection 3.1(3) is unclear. If it is the intention of the section that a person or company that ceased to be an unregistered investment fund manager in a year and did not then become a registrant is not required to pay any participation fee in respect of that year, the section should be revised as follows:

Subsection (2) does not apply to ~~require the payment of a participation fee by~~ a person or company ~~90 days after the end of its fiscal year~~ if the person or company

- (a) ceased at any time in the fiscal year to be an unregistered investment fund manager, and
- (b) the person or company did not become a registrant firm at that time.

If it is the intention of the section that a person or company that ceased to be an unregistered investment fund manager in a year and did not then become a registrant is required to pay a participation fee at a time other than within 90 days of its year-end, the section should be revised accordingly.

We appreciate the opportunity to provide the OSC with our comments on the Proposed Materials. Please do not hesitate to contact the following members of the working group with any comments or questions that you may have:

Gary Ostoich, Spartan Fund Management
Chair, AIMA Canada
(416) 368-0027
gostoich@spartanfunds.ca

Ian Pember, Hillsdale Investment Management Inc.

Alternative Investment Management Association - Canada
P.O. Box 786, Station "A", Toronto, ON, M5W 1G3



Alternative Investment Management Association - Canada

Co-Chair, Legal & Finance Committee, AIMA Canada
(416) 913-3920
ipember@hillsdaleinv.com

Dawn Scott, Torys LLP
Co-Chair, Legal & Finance Committee, AIMA Canada
(416) 865-7388
dscott@torys.com

Yours truly,

Alternative Investment Management Association – Canada Inc.

By:

Ian Pember

On behalf of AIMA Canada and the Legal & Finance Committee

6133272.1