



Alternative Investment Management Association (AIMA)

The Forum for Hedge Funds, Managed Futures and Managed Currencies

Chairman

Gary Ostoich

Tel. (416) 368-0027

Deputy Chairman

Andrew Doman

Tel. (416) 775-3641

Legal Counsel

Michael Burns

Tel. (416) 865-7261

Treasurer

Chris Pitts

Tel. (416) 947-8964

Secretary

Paul Patterson

Tel. (416) 363-6526

Chief Operating

Officer

James Burron

Tel. (416) 453-0111

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British Columbia Securities Commission

Alberta Securities Commission

Financial and Consumer Affairs Authority of Saskatchewan

The Manitoba Securities Commission

Ontario Securities Commission

Autorité des marchés financiers

Financial and Consumer Services Commission of New Brunswick

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Nova Scotia Securities Commission

Superintendent of Securities, Newfoundland and Labrador

Registrar of Securities, Northwest Territories

Registrar of Securities, Yukon Territory

Registrar of Securities, Nunavut

Leslie Rose

Senior Legal Counsel, Corporate Finance

British Columbia Securities Commission

P.O. Box 10142, Pacific Centre

701 West Georgia Street

Vancouver, British Columbia, V7Y 1L2

Fax: 604-899-6814

lrose@bcsc.bc.ca

canada.aima.org

The Secretary

Ontario Securities Commission

20 Queen Street West

22nd Floor

Toronto, Ontario, M5H 3S8

Fax: 416-593-2318

comments@osc.gov.on.ca

Me Anne-Marie Beaudoin

Corporate Secretary

Autorité des marchés financiers

800, square Victoria, 22e étage

C.P. 246, tour de la Bourse

Montréal (Québec) H4Z 1G3

Fax : 514-864-6381

consultation-en-cours@lautorite.qc.ca

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The Alternative Investment Management Association - Canada

80 Richmond Street West, Suite 504, Toronto, ON, M5H 2A4

Tel. 416-453-0111 Email: info@aima-canada.org Internet: canada.aima.org



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Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment

Proposed Amendments to National Instrument 45-106 Prospectus and Registration Exemptions Relating to Proposed Form 45-106F10 - Report of Exempt Distribution For Investment Fund Issuers (Alberta, New Brunswick, Ontario and Saskatchewan) (the "Proposed Form")

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 Proposed Form.

As the global hedge fund association, AIMA has over 1,400 corporate members (with over 7,000 individual contacts) worldwide, based in over 50 countries. Members include hedge fund managers, fund of hedge funds managers, prime brokers, legal and accounting firms, investors, fund administrators and independent fund directors. AIMA's manager members manage a combined \$1.5 trillion in assets (as of March 2014). All AIMA members benefit from AIMA's active influence in policy development, its leadership in industry initiatives, including education and sound practice manuals and its excellent reputation with regulators worldwide.

AIMA is a dynamic organisation that reflects its members' interests and provides them with a vibrant global network. AIMA is committed to developing industry skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) - the industry's first and only specialised educational standard for alternative investment specialists. For further information, please visit AIMA's website, www.aima.org.

The majority of AIMA Canada's more than 110 members are managers of hedge funds and fund of funds. Most are small businesses with fewer than 20 employees and \$50 million or less in assets under management. The majority of assets under management are from high net worth individuals 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 exemptions. Manager members also have multiple registrations with the securities regulatory authorities: as Portfolio Managers ("PMs"), Investment Fund Managers ("IFMs") and in many cases as Exempt Market Dealers ("EMDs"). AIMA Canada's membership also includes accountancy and law firms with practices focused on the alternative investments sector. As PMs our members may also act solely as advisors to clients, acting with discretionary responsibility over separately managed accounts held in custody at other financial institutions. For more information

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about AIMA Canada please visit our web site at www.canada.aima.org.

Summary and Overview

We understand that the Proposed Form is intended to provide securities regulatory authorities in the applicable jurisdictions with more complete and timely information concerning the distribution of investment fund securities - however we have significant concerns with several aspects of the Proposed Form and generally with what would be the regime for the reporting of exempt distributions of securities in Canada by investment funds.

- If the Proposed Form and exempt trade reporting regime is adopted, investment funds could be faced with having to use two different forms of exempt trade report, each with different informational requirements and filing deadlines. This will make compliance with the exempt trade reporting requirement more costly to administer and highly confusing for both domestic and foreign domiciled investment funds. In our view, the Proposed Form represents a further splintering of one of the core objectives of the CSA (harmonization of regulation in Canada) and is contrary to the public interest. We strongly disagree with the comment in the Anticipated Costs and Benefits, section E Proposed Reports that "The additional information is not expected to result in a material increase in cost for the issuer or underwriter preparing the report." Multiple reports for multiple regulatory authorities in multiple formats with multiple filing deadlines will certainly result in a large increase in both costs and time required for investment funds to comply. In addition, to this, the fourfold increase in fees is unacceptable. Most AIMA Canada members will be subject to these increased costs as their investment funds are in continuous distribution throughout the year. We submit that the fee schedule be adjusted so that an investment fund's total filing fees would be unchanged from current levels. The investment fund industry should not be required to fund a regulatory desire for information. This is especially the case where regulatory authorities in the applicable jurisdictions have failed to demonstrate that there are significant issues in the exempt distribution of securities of investment funds (compared to other types of issuers) which demand increased informational requirements.
- Although we do not object to most of the information which would be included in the Proposed Form, in our view much of the Fund, Manager and service provider specific information will not change from quarter to quarter (the currently proposed timing for the filing of reports). Accordingly, we believe that the Proposed Form and/or reporting system should be amended to permit investment funds to rely upon information provided in previously filed reports.

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Our specific comments on the Proposed Form are expanded upon below.

1. The Proposed Form represents further fragmentation amongst the members of the CSA. If adopted, an investment fund could be required to use two different forms of exempt trade report (Form 45-106F1 in British Columbia, Manitoba, Québec, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Nunavut, Northwest Territories and Yukon and Form 45-106F10 in Alberta, New Brunswick, Ontario and Saskatchewan) for an exempt distribution of securities in Canada. Each Form has unique informational requirements which will lead to the potential for confusion and increased costs for complying with the new reporting regime.
2. If the new reporting regime is adopted, investment funds may be required to report exempt trades in compliance with three different filing deadlines (i) within 10 days of the date of the trade where the exemption in section 2.9 of NI 45-106 is relied upon; (ii) quarterly (in Alberta, Saskatchewan, Ontario and New Brunswick); and (iii) annually (in other jurisdictions except as noted in (i) above). This will only create further confusion. We submit that a quarterly reporting requirement is too frequent for investment funds and we strongly encourage the CSA to adopt a uniform annual filing deadline for investment fund exempt trade reports. We note that the ability to annually report private placements of the securities of investment funds under continuous distribution was accepted by the CSA and formalized in NI 45-106 after many years of CSA members routinely granting relief from the otherwise applicable obligation to within 10 days of the date of a trade. If the CSA feels that more meaningful information would be beneficial, then we suggest that updated information be required only if a specific assets under management (AUM) threshold is reached, for example, if total AUM for an investment fund exceeded Cdn\$1 billion in the prior quarter. By way of comparison, we note that under the Form PF regime, the SEC only requires quarterly reporting from hedge fund advisors with more than US\$1.5 billion of AUM.
3. We note that several items of information required to be included in the Proposed Form each quarter consists of data which rarely or infrequently changes. Examples of this information include: Item 1 (FundSERV Code (if applicable), Date Fund was created, Financial Year End of the Fund); Item 3 (Fund Structure); Item 4 (Director and Officer Information - Fund); Item 5 (Type of Investment Fund); Item 7 (Investment Fund Manager information); Item 8 (Director and Officer Information for Investment Fund Manager); and Item 9 (Principal Service Providers). Given the static

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nature of this information, it would represent a significant administrative burden to repeat it on each and every quarterly report. We would recommend that the Proposed Form include a section which references whether or not it is an initial report and permit investment funds to reference the information provided in the initial report and only update the report in the event there is a change in the information provided in the initial report. For example, each item could include a box to be checked if "Unchanged from previous filing".

4. Item 15 of the Proposed Form requires disclosure of information relating to the total dollar value of all redemptions of the investment fund's securities since the date of the last report and, if it is the initial report being made by the Fund utilizing the Proposed Form, redemption information since the date that the Fund was created. We would respectfully submit that the initial information on redemptions requested would be unduly burdensome and indeed perhaps impossible to collect and to report for any investment fund which has been in existence for several years, and especially so for foreign domiciled investment funds which would be required to report such information based on redemptions received world-wide. The Proposed Form is also not clear as to whether redemption information is required only for the distributed securities which are the subject of the report or for all securities of the investment fund in question. We would suggest that the Proposed Form not require information on redemptions for the initial report and that subsequent reports only reference the total dollar value of redemptions since the date of the initial report and that the disclosure only relate to redemption of the class of securities which are the subject of the exempt trade report.
5. We also question why in Item 15 issuers are required to disclose "Each Canadian and foreign jurisdiction where purchasers reside". The Proposed Form is a report of distributions made in reliance on prospectus exemptions specified in section 6.1 of NI 45-106. Sales made in foreign jurisdictions are made pursuant to the securities laws of those jurisdictions. Requiring the reporting of all sales by an issuer regardless of where the purchaser resides, and requiring detailed individual information on investors who reside outside the local jurisdiction (and in particular outside Canada), will result in the extra-territorial application of a local rule. It may provide a disincentive for foreign investors to acquire securities of Canadian investment funds, which is not in the best interest of these Canadian issuers. It may also provide yet another disincentive for foreign investment funds, who may already be reluctant to become subject to a patchwork securities law regime in Canada, to offer their securities in Canada, thereby depriving Canadian investors

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from access to securities that might otherwise be suitable for them (and indeed might be in their best interest). Requiring this disclosure from foreign investment funds may also create issues under applicable privacy laws or agreements to which foreign funds may be subject or bound.

6. Schedule 1 to the Proposed Form requires disclosure of the age range of Purchasers. Provided that the individual has reached the age of majority, we submit that the age of the purchaser is irrelevant for the purposes of determining whether the securities in question have been validly distributed pursuant to an exemption from the prospectus requirement under applicable securities laws. If regulatory authorities wish to gather the information for some other purpose (e.g. analysis) then this should be made explicit and justified on a cost/benefit basis. As registrants requesting the information from their investors/clients, we anticipate that there may be more objections raised by individuals, further impairing sales efforts by investment funds.
7. Please confirm that investment funds are not required to obtain a telephone number and an email address from all investors for the sole purpose of completing Schedule 1. We note that Form 45-106F6 clearly states that, if the purchaser refuses to provide a telephone number or an email address, the response "not provided" is acceptable.
8. We do not understand why Instruction 15 to Schedule 1 requires a listing of all paragraphs under which an investor qualifies as an accredited investor for the purposes of the exemption from the prospectus requirement in section 2.3 of National Instrument 45-106. To qualify as an accredited investor, an investor need only qualify under one of the paragraphs. To require investment funds to collect this additional information from investors is unnecessary and administratively burdensome. The Schedule should only require disclosure of one paragraph under which the investor qualifies as an accredited investor.
9. We strongly disagree with the comment in the Anticipated Costs and Benefits, section E Proposed Reports that "The additional information is not expected to result in a material increase in cost for the issuer or underwriter preparing the report." Multiple reports for multiple regulatory authorities in multiple formats with multiple filing deadlines will certainly result in a large increase in both costs and time required for investment funds to comply. As the stated benefit is "more timely and better data" for regulatory authorities and more meaningful information for monitoring market activity, then we submit that requiring quarterly information only from large investment funds (e.g. funds with AUM in excess of Cdn\$1 billion) is sufficient. In our opinion, the

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additional cost and effort that would be incurred by investment funds to comply with the requirements of the Proposed Form do not justify a benefit of better information for regulatory authorities. In addition, to this, the fourfold increase in fees is unacceptable. Most AIMA Canada members will be subject to these increased costs as their investment funds are in continuous distribution throughout the year. We submit that the fee schedule be adjusted so that an investment fund's total filing fees would be unchanged from current levels. The investment fund industry should not be required to fund a regulatory desire for information. This is especially the case where regulatory authorities in the applicable jurisdictions have failed to demonstrate that there are significant issues in the exempt distribution of securities of investment funds (compared to other types of issuers) which demand increased informational requirements.

Conclusion

In summary, our principal concerns with the Proposed Form are: (i) the potential for confusion caused by multiple forms and deadlines across Canada for the filing of exempt trade reports by investment funds; and (ii) the additional administrative burden and cost arising from the increased reporting requirements in the Proposed Form.

For these reasons, we do not think that the Proposed Form strikes an appropriate balance between the benefits of collecting information on the exempt market in investment funds and more effective regulatory oversight given the significant compliance burden that it would impose.

We would like to particularly encourage the CSA to work to harmonize rather than to further fragment securities regulation in Canada and to simplify regulatory reporting as much as possible. The current approach may stifle capital-raising and thereby limit both investment choice for Canadian investors and the ability of Canadian investment funds to raise capital outside of Canada.

We note that various CSA members, in their annual reports have stated that cost-effective regulation is a priority. In our opinion this fragmentation of reporting requirements is diametrically opposed to this objective. We also note that the CSA has begun a multi-year project to redesign national filing systems. We are supportive of this project and note that it should include regulatory reporting by registrants. AIMA Canada would welcome the opportunity to participate in any national user group established as part of this project.

We appreciate the opportunity to provide the CSA with our views on the Proposed Form. Please do not hesitate to contact the members of AIMA set out

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below with any comments or questions that you might have.

Ian Pember, Hillsdale Investment Management Inc.
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

Michael Burns, McMillan LLP
(416) 865-7261
michael.burns@mcmillan.ca

Yours truly,

ALTERNATIVE INVESTMENT MANAGEMENT ASSOCIATION

By:

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

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The Alternative Investment Management Association - Canada
80 Richmond Street West, Suite 504, Toronto, ON, M5H 2A4
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