



Alternative Investment Management Association (AIMA)

100 Front Street West, Suite 504, Toronto, Ontario M5H 2A4, Canada

Chairman

Richard A. Orr
Tel: (416) 367-0000

Co-Policy Chairpersons

Paul Patterson
Tel: (416) 363-8586

Legal Counsel

Tom Ash
Tel: (416) 869-4439

Secretary

Derek Chisum
Tel: (416) 869-4439

Board Member

Richard O'Connell
Tel: (416) 367-0000

Board Member

Charles Van Winkle
Tel: (416) 367-0000

Chief Operating Officer

James Hamilton
Tel: (416) 453-0111

canada.aima.org

October 19, 2015

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Superintendent of Securities, Department of Justice and Public Safety,
Prince Edward Island
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

c/o

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
E-mail: 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
E-mail: consultation-en-cours@lautorite.qc.ca

Dear Sirs:

RE: CSA Notice and Request for Comment - Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions* relating to

Representing the global hedge fund industry

The Alternative Investment Management Association - Canada
80 Richmond Street West, Suite 504, Toronto, Ontario M5H 2A4
Tel. (416) 453-0111 Email: info@aima-canada.com Internet: canada.aima.org



Alternative Investment Management Association (AIMA)

The Forum for Hedge Funds, Managed Futures and Managed Currencies

Reports of Exempt Distribution (“Notice”)

Please accept this letter as our submission of comments requested by the Notice. We, the Canadian National Group (“AIMA Canada”) of the Alternative Investment Management Association (“AIMA”) appreciate the opportunity to provide our comments on this subject.

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 2015). 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 organization 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 specialized 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 (“AUM”) the majority of which are from high net worth individuals and are typically invested in pooled funds managed by the member. Investments in these pooled funds are sold by way of private placement pursuant to exemptions from applicable prospectus requirements in each province and territory, primarily the accredited investor exemption. However many AIMA Canada members have AUM in the hundreds of millions or higher, a significant portion of which is from institutional investors. AIMA Canada manager members are required to have multiple registrations with securities regulatory authorities: 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. In addition, our manager members may act as investment advisors with discretionary responsibility over separately

Representing the global hedge fund industry

The Alternative Investment Management Association - Canada
80 Richmond Street West, Suite 504, Toronto, Ontario M5H 2A4
Tel. (416) 453-0111 Email: info@aima-canada.com Internet: canada.aima.org



Alternative Investment Management Association (AIMA)

The Forum for Hedge Funds, Managed Futures and Managed Currencies

managed accounts held in custody at certain financial institutions. For more information about AIMA Canada please visit our web site at www.canada.aima.org.

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

Set out below are our comments.

General Comments

We acknowledge the objectives of the Canadian Securities Administrators ("CSA") in collecting meaningful information regarding the exempt market in Canada and support any initiative that lessens the procedural burden of AIMA member firms carrying on business across Canada, without compromising the public policy objectives for which measures, such as the requirement to file a Form 45-106F1, were enacted. However, we query whether the substantial increase in the information required to be provided in the proposed form of exempt trade report Form 45-106 F1 (the "Proposed Report"), and certain information in particular will in fact provide any benefit to issuers, the CSA or investors.

One of the stated intentions of the Proposed Report is to "reduce the compliance burden for issuers and underwriters by having a harmonized report of exempt distribution". While we support a harmonized report of exempt distribution and acknowledge that such a report may lower the burden compared to a requirement to prepare and file multiple different exempt trade reports, we are concerned that the maintenance of at least three separate filing methods (British Columbia, Ontario and elsewhere) will still impose a significant administrative burden on issuers.

The second stated intention of the Proposed Report is to "provide securities regulators with the necessary information to facilitate more effective regulatory oversight of the exempt market and improve analysis for policy development purposes". In line with this intention, we submit that the CSA should have a clear rationale or proposed use for each item of data to be collected in the Proposed Report. We are also concerned that the current variety of filing methods for exempt trade reports may impair the ability of the CSA to effectively collate and utilize the data collected. We encourage all CSA members to use a system which is the

Representing the global hedge fund industry

The Alternative Investment Management Association - Canada
80 Richmond Street West, Suite 504, Toronto, Ontario M5H 2A4
Tel. (416) 453-0111 Email: info@aima-canada.com Internet: canada.aima.org



Alternative Investment Management Association (AIMA)

The Forum for Hedge Funds, Managed Futures and Managed Currencies

same as or substantially similar to the OSC portal for the filing of the Proposed Report.

AIMA Canada members are frequently required to provide information to the CSA and other regulatory agencies. Examples include the current forms of exempt trade reports, annual filings pursuant to National Instrument 31-103 - *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, Ontario Securities Commission Rule 13-502 *Fees* and related requirements in other jurisdictions, registrant-specific and more generic Risk Acknowledgement Questionnaires ("RAQs"), amongst others. We urge the CSA to give consideration to relying on the format of information requests currently used such as the RAQ spreadsheet that was used by the OSC in 2014 to collect details with respect to private funds, to collect any additional information and to decrease the burden of those submitting information.

We note that the instructions contained in the Proposed Report, and in particular items 2 and 4, contain a summary of the CSA's view of a number of legal questions relevant to the completion of the form, including issues of jurisdiction and the inter-relation of agency and trust law. To the extent these legal summaries are intended to assist in the interpretation of National Instrument 45-106 *Prospectus Exemptions* ("NI 45-106"), we urge the CSA to consider placing these legal summaries in the companion policy to that instrument rather than the Proposed Report.

Comments on Specific Elements of Form 45-106F1

Set out below are our comments on specific items of the Proposed Report. The numbering below corresponds to the number used in the Proposed Report.

Item 6(b): We urge the CSA to use the same categories of funds as used in the recent RAQ or to further categorize fund types or strategies based on categories reported by widely available indices utilized by the industry such as the HFRI Hedge Fund Indices or Scotiabank Canadian Hedge Fund Index to expand the universe of comparable data.

We urge the CSA to provide guidance on the categories listed, both to assist filers in making the correct selection and also to collect more accurate market information. Finally, we query the specific emphasis in Item 6(b) on fund of funds and UCITs, given the wide range of fund types or strategies and other international investment fund regimes under

Representing the global hedge fund industry

The Alternative Investment Management Association - Canada
80 Richmond Street West, Suite 504, Toronto, Ontario M5H 2A4
Tel. (416) 453-0111 Email: info@aima-canada.com Internet: canada.aima.org



Alternative Investment Management Association (AIMA)

The Forum for Hedge Funds, Managed Futures and Managed Currencies

which fund issuers may be formed.

Item 6(f): For better comparability, we suggest that net asset value ("NAV") be reported as at December 31 for funds that choose to report annually and for all other reports, we suggest that NAV be reported as of the reporting date. Funds that are unable to calculate a December 31 NAV by the annual filing deadline (such as fund of funds) should have the option to report NAV as of the date of the most recent NAV calculation immediately preceding December 31, provided a reason for using such NAV is given (e.g. fund of funds, data not yet available).

As NAV is to be reported in Canadian dollars, a cross reference to general instruction 9 should be provided. We note that using a common reporting date such as December 31 will also reduce the risk that an incorrect exchange rate is used. Again, we emphasize that the collection of data should be structured to ensure its comparability.

Instruction to Item 7: The first instruction provides: "Generally, if the issuer is located outside of Canada, only include information about purchasers resident in Canada in Item 7 and Schedule 2." Why is this "generally" the case? When would an issuer "located" outside of Canada ever report to the CSA in Canada in respect of purchasers outside of Canada? Additionally, the term "located" has no clear meaning. It would be more precise to refer to a fund "organized under the laws of a jurisdiction outside Canada and with its head office and principal place of business located outside of Canada".

Item 7(a): As many investment fund issuers simultaneously offer securities denominated in different currencies (e.g. an A Class denominated in Canadian dollars and a U Class denominated in United States dollars), please ensure that the final form of the Proposed Report permits a distribution of securities denominated in more than one currency to be reported.

7(b): The requirement to report a fixed "start date" and "end date" for a distribution does not accommodate investment funds (such as most hedge funds) that are in continuous distribution and therefore do not have an "end date".

We respectfully submit that it would be preferable to have three distribution periods included in the Proposed Report:

Representing the global hedge fund industry

The Alternative Investment Management Association - Canada
80 Richmond Street West, Suite 504, Toronto, Ontario M5H 2A4
Tel. (416) 453-0111 Email: info@aima-canada.com Internet: canada.aima.org



Alternative Investment Management Association (AIMA)

The Forum for Hedge Funds, Managed Futures and Managed Currencies

- (i) Distribution with a single closing date: Indicate distribution date;
- (ii) Distribution over a fixed period: Indicate start date and end date of the distribution; and
- (iii) Continuous Offering: Indicate start date and end date for the “distribution period covered by the report”, such as a calendar year (e.g. 2015-01-01 to 2015-12-31).

Many foreign issuers do not know what the “distribution date” is. It would be helpful to provide guidance in the Proposed Report that the distribution date is the date the securities are issued and sold and the investor becomes the beneficial owner of the security.

Item 7(g): We believe that the use of the concept of “net proceeds” could lead to a substantial amount of confusion for those completing the Proposed Report. The measure proposed could be considered by some to mean “net new cash flow or outflow”.

Reporting “net new cash flow or outflow” on a jurisdiction by jurisdiction basis is impractical for a single series or class of securities (let alone two or more series or classes). It is unduly burdensome and will not provide accurate or meaningful information to the CSA in the context of investment funds managed by AIMA members. If jurisdiction by jurisdiction data was available, which we expect it is not, how are net new cash flows to be calculated: how does an investment fund treat switches among different funds within the same fund family or the value of securities purchased by investors when they reinvest distributions back into their funds?

It may be possible for funds to report redemptions at the fund level for the distribution period covered by the report, but we query the utility of this data. If the CSA desires to understand exempt market cash flows in Canada then we suggest that sales and redemptions should be reported separately.

Item 7(h): We were surprised to see the reference to marketing materials in the shaded language of this section as we are not aware of any requirement to file or deliver marketing materials for an exempt distribution in any Canadian jurisdiction.

Schedule 2: We suggest that the CSA create a template spreadsheet to be used by filers (in Excel format) that sets out the specific form in which it

Representing the global hedge fund industry

The Alternative Investment Management Association - Canada
80 Richmond Street West, Suite 504, Toronto, Ontario M5H 2A4
Tel. (416) 453-0111 Email: info@aima-canada.com Internet: canada.aima.org



Alternative Investment Management Association (AIMA)

1177 Avenue Road, Suite 1000, Toronto, Ontario M5H 2A4

would prefer to receive the information requested in Schedule 2. For example, if it is the preference that the subsection of an exemption relied upon be in a separate column that should be set out in the form. The use of a standardized spreadsheet would make it much easier for the CSA to collect and collate the information reported as part of Schedule 2 of the Proposed Report. We would also appreciate guidance on how to refer to the exemptions set out the *Securities Act* (Ontario) in addition to the exemptions in NI 45-106.

Instructions Item 4: We suggest that the CSA clarify how it is expected that the required information be inputted into the form in circumstances where the investor is investing on behalf of a fully managed account, and information relating to two entities is required.

Responses to Specific Questions Contained in the Notice

Below are comments on certain specific questions set out in the Notice:

1. Question 1: As noted above, we do not believe the reporting of “net new cash flow or outflow” strikes an appropriate balance. Overall, as it applies to hedge funds and alternative investment funds, the Proposed Report should be tailored, as we have suggested, to better reflect the industry. Overall, we feel that the Proposed Report would greatly benefit from further industry consultation including the collection of sample forms completed by industry participants. We are concerned that unless the Proposed Report is well understood and suited to all issuers (including the investment funds industry), it will not result in the collection of reliable, comparable or useful data.
2. Question 2: We are unsure why certain information is being collected, such as financial year end (especially in the context of investment funds as the filing deadline will be changed to 30 days from December 31 from the current 30 days from the fund’s financial year-end) or “net new cash flow or outflow”. We’re not sure how the CSA intend to use such data.
3. Question 3: NAV seems to be an appropriate measure for the relative size of an investment fund. Reporting NAV calculated as of the dates suggested in our comment on item 6(f) above, is acceptable.
4. Question 9: We are in favour of a single form. If the reporting and
Representing the global hedge fund industry

The Alternative Investment Management Association - Canada
80 Richmond Street West, Suite 504, Toronto, Ontario M5H 2A4
Tel. (416) 453-0111 Email: info@aima-canada.com Internet: canada.aima.org



Alternative Investment Management Association (AIMA)

The Forum for Hedge Funds, Managed Futures and Managed Currencies

collection of additional data with respect to a registrant managing or advising an investment fund is required or desirable, we suggest the CSA move to a stand-alone report like a Form PF used in the United States rather than collecting data in connection with trade reporting that has a very different function and purpose.

5. Question 10: We support the change in the deadline for an annual filing. It should reduce compliance errors and, provided some of the changes noted above are made, improve comparability of the data.
6. Question 11: The CSA should provide electronic templates in Excel format. This will improve data collection, collation, storage and analysis.

We appreciate the opportunity to provide our comments on the Notice. Please do not hesitate to contact the members of AIMA Canada set out below with any comments or questions you might have.

Michael A. Burns, Borden Ladner Gervais LLP
Chairman, AIMA Canada
(416) 367-6091
mburns@blg.com

Ian Pember, Hillsdale Investment Management Inc.
Co-Chair, Legal & Finance Committee, AIMA Canada
(416) 913-3930
ipember@hillsdaleinv.com

Jennifer Wainwright, Aird & Berlis LLP
Co-Chair, Legal & Finance Committee, AIMA Canada
(416) 865-4632
jwainwright@airdberlis.com

Yours truly,

ALTERNATIVE INVESTMENT MANAGEMENT ASSOCIATION

Per: Michael A. Burns

Representing the global hedge fund industry

The Alternative Investment Management Association - Canada
80 Richmond Street West, Suite 504, Toronto, Ontario M5H 2A4
Tel. (416) 453-0111 Email: info@aima-canada.com Internet: canada.aima.org