

June 9, 2017

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**Delivered by Email**

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Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission, New Brunswick  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
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Superintendent of Securities, Northwest Territories  
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Dear Sirs/Mesdames:

**Re: Canadian Securities Administrators ("CSA") Consultation Paper 81-408 –  
Consultation on the option of discontinuing embedded commissions  
("the Consultation Paper")**

This comment letter is submitted on behalf of the Canadian section ("AIMA Canada") of the Alternative Investment Management Association ("AIMA") and its members to provide our comments to you on the legislation referred to above.

**About AIMA**

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 alternative investment 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 1,700 corporate members in more than 50 countries, including many leading investment managers, professional advisers and institutional investors. AIMA Canada, established in 2003, now has more than 140 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 provide leadership to the industry and be its pre-eminent voice; and to develop sound practices, enhance industry transparency and education, and to liaise with the wider financial community, institutional investors, the media, regulators, governments and other policy makers.

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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. 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 exemptions. Manager members also have multiple registrations with the securities regulatory authorities: as Portfolio Managers, Investment Fund Managers and in many cases as Exempt Market Dealers. AIMA Canada's membership also includes accountancy and law firms with practices focused on the alternative investments sector.

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For more information about AIMA Canada and AIMA, please visit our web sites at [canada.aima.org](http://canada.aima.org) and [www.aima.org](http://www.aima.org).

## **Comments**

AIMA Canada appreciates the opportunity to comment on these proposed changes, which if adopted could have significant consequences on Canada's investment industry.

We applaud the CSA for their very detailed analysis and consideration of the issues and potential regulatory responses. We urge the CSA, however, to consider all other recent regulatory developments and measure their effect on investors and adviser behaviours before imposing yet another layer of costly regulatory change that may in fact be unnecessary or the cost of which may outweigh the intended benefits.

We do not propose to provide a detailed response to the specific questions asked. Our principal concern is the cumulative effect of all of the recent regulatory changes on the investment industry as a whole. We believe it will be difficult to fully understand the effect of individual initiatives when all are being introduced at the same time. Regulatory burden is increasingly taking up time and resources, at a significant cost, and unless regulators can reasonably determine whether individual initiatives are having the intended effect on behaviours and investor protection, some or much of that regulatory burden may be unnecessary. Ultimately, the cost of compliance is borne by investors.

With that background, we are asking the CSA to postpone any final decision on embedded fees until such time as the investment industry has had time to fully absorb the effect of recent regulatory changes (and in particular enhanced client reporting), until the investing public has had time to react to the enhanced information that they are now beginning to receive, and until the CSA have had time to study those results and are better able to assess whether a drastic regulatory change, such as a prohibition on the payment of embedded fees (or any other form of compensation), is justified.

The regulatory changes proposed in the Consultation Paper are premised on the CSA's conclusion that (i) embedded fees create a conflict of interest between fund manager, dealers and investors, (ii) this conflict of interest cannot be resolved by full disclosure, and (iii) the investment industry has not adequately addressed this issue.

Any form of payment to a dealer in connection with the sale of an investment product creates a potential conflict of interest if it provides an incentive to prefer the sale of one product over another.

Historically, such a conflict has been addressed through disclosure so that a client, knowing of the conflict, can make an informed decision. To that end, recent initiatives of the CSA, including uniform point of sale (POS) disclosure and enhanced investor reporting in the form of CRM2, were designed to help ensure that the investing public is better informed of the fees they can expect to pay and are paying on an ongoing basis.

We believe that the POS and CRM2 reforms have already disrupted the industry with more dealers moving from trailing fees to fee based services. We also believe that more time is required to better understand the effect of those reforms as they work through the dealers' client base. We would recommend that a minimum period of three years would provide additional data to properly evaluate the impact of existing reforms and for the CSA to further assess if additional regulatory changes are still considered necessary.

Allowing industry participants additional time for POS and CRM2 reforms to take hold will allow the industry to adapt naturally to the disruption they are already facing and will yield the following benefits:

- Reduce the risk of further consolidation in the industry which limits available choices to investors and could have follow-on impacts to smaller asset managers who don't have access to the distribution channels currently dominated by the banks.
- Reduce the risk of an advice gap providing more time for automated advisor solutions to be further developed which will further disrupt the way fees are charged and provide investors with more options.

We note that the CSA have stated in the Consultation Paper that they chose not to consider capping embedded commissions, as an alternative to an outright prohibition, on the basis that it would "cause the CSA to take a non-traditional role of setting fee caps for investment products, rather than implementing measures intended to promote market efficiency". We suggest that a prohibition is the same as capping embedded fees at zero, and that the CSA should be focused on the other initiatives they have been implementing to promote market efficiency.

## **Conclusion**

Canada is a unique market. It is regulated differently than other markets and the composition of its investment industry is also unique. It is a small market dominated by the large bank-owned dealers. We respectfully submit that the CSA ought not to be too swayed by the regulation of embedded fees in other jurisdictions and to take the time to consider the aggregate of all of the other made-in-Canada regulations before adopting prohibitions that will have definite, and potentially unintended, consequences on the distribution of investment products in Canada.

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

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Yours truly,

**ALTERNATIVE INVESTMENT MANAGEMENT ASSOCIATION**

By:

