Alternative Investment Management Association (AIMA)

The Forum for Hedge Funds, Managed Futures and Managed Currencies

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Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
Prince Edward Island Securities Office
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
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Dear Sirs/Mesdames:

Re: AIMA Canada's Comments on Proposed National Instrument 45-106 *Prospectus and Registration Exemptions*

This letter is being written on behalf of the Canadian chapter of the Alternative Investment Management Association ("AIMA") and its Members to provide our comments to you on proposed National Instrument No. 45-106 *Prospectus and Registration Exemptions* ("NI 45-106").

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 educational and research body that specifically represents practitioners in hedge fund, futures fund and currency fund management – whether managing money, providing a service such as prime brokerage, administration, legal or accounting. AIMA's global membership comprises over 700 corporate members, throughout 43 countries, including many of the leading investment managers, professional advisers and institutional investors. AIMA's Canadian chapter, established in 2003, now has over 60 corporate members.

One of the objectives of AIMA is to ensure the representation and integration of skill-based investments into mainstream investment management. AIMA works closely with regulators and interested parties in order to better promote and control the use of alternative investments.

General Comments

We would like to applaud the CSA for its continuous efforts to harmonize securities regulation across Canada and the spirit in which proposed NI 45-106 was developed. We have concerns, however, that NI 45-106 falls short of the CSA's goal of creating "a national harmonized prospectus and registration exemptions instrument". In particular, we are concerned with the number of carve-outs and exceptions set out in the proposed instrument and are disappointed that the CSA have been unable to agree on a number of proposed exemptions.

The alternative investment fund industry in Canada has had to rely on the prospectus and registration exemptions set out in the various provincial statutes, regulations and instruments, as the investment restrictions set out in National Instrument 81-102 do not permit the diverse alternative investment strategies employed by our Members. It has been a source of continued frustration for our Members to navigate the patchwork of securities regulation currently in place in Canada when marketing and selling alternative investment funds to Canadian investors. We believe that the confusion caused by the differences in securities regulation in Canada is not in the best interests of the investing public, nor is it in the best interest of market participants. Because of the differences and inconsistencies in regulatory approach in each of the provinces to date, investment funds relying on the prospectus and regulation exemption regime have either had to incur disproportionate costs in ensuring regulatory compliance in all jurisdictions in which they wish to offer their securities or inadvertently assume certain regulatory risk in attempting to create and offer a "one size fits all" investment fund product for all Canadian investors. Canadian investors from the smaller markets often are not given access to investment opportunities available to investors in the larger markets, because the additional cost of ensuring compliance in each respective jurisdiction discourages many fund managers from offering their product in the smaller markets. A truly harmonized prospectus and registration exemption instrument would help address that unfortunate circumstance.

With the foregoing in mind, we offer the following specific comments on the proposed instrument:

Local Exemption Rules

We are disappointed that OSC Rule 45-501 and certain other local exemption rules will continue, even after the adoption by the CSA of NI 45-106. We are strongly of the view that the continuation of such local rules will undermine the purpose of NI 45-106, and we encourage the CSA to reconsider this approach.

Accredited Investors and Fully Managed Accounts

We applaud the OSC's decision to include fully managed accounts in the definition of

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accredited investor for the purpose of investing in mutual funds and other investment funds, and we support that change.

We also support the inclusion, in the definition of accredited investor, of "an investment fund that distributes or has distributed its securities only to persons … who are or were accredited investors at the time of the distribution". We believe however that it should apply, so long as investors from the relevant Canadian jurisdiction are or were accredited investors at the time of the distribution, without regard to the status of investors outside the jurisdiction. We do not believe that, if an investment fund has investors from other jurisdictions who have been issued securities of the fund in compliance with the regulatory requirements of the jurisdiction in which they reside, such investment fund should be precluded from investing in private placements in that jurisdiction pursuant to the accredited investor exemption. We believe that the policy behind this exemption is addressed so long as all investors from that jurisdiction are accredited investors. Alternatively, we would support an exemption that requires all Canadian investors to be accredited investors so long as the Fund is not required to confirm the status of the non-Canadian investors.

The Exemption for Family, Friends and Business Associates

We are disappointed with the OSC's decision to opt out of Section 2.5, which offers a prospectus and registration exemption for trades to family, friends and business associates. Like other issuers, hedge funds in their early stages often require a minimum amount of seed money which would permit the fund manager to launch a new investment fund with a view to building a track record on which the fund could then be marketed to a broader market. Historically, seed money has come from family, friends and business associates of the principals and promoters of a new issuer. We believe that the unavailability of this exemption in Ontario creates a barrier to entry which portfolio managers in the other provinces do not have. We strongly urge Ontario to adopt this exemption so as to permit Ontario portfolio managers who wish to start up their own investment fund, or simply wish to make an existing fund available to their family, friends and business associates, the same opportunity as is afforded to residents of the other provinces of Canada.

Offering Memorandum Exemption

We are also disappointed that Ontario has chosen not to adopt the offering memorandum exemption which is available in the other provinces. Furthermore, we would like to see an exemption which is available across Canada which would allow an investment fund to offer securities in reliance on this exemption. We believe that, with the minimum disclosure requirements of the exemption, regulatory concerns about ensuring that investors receive sufficient information on which to make their investment decision can be satisfied while at the same time allowing the issuer to avoid the significant costs of filing a prospectus and becoming a reporting issuer. We believe that the new disclosure rule set out in NI 81-106 will help ensure that there is continuous disclosure for investors in such products. We would also like to see a form requirement which is specific to investment funds as there are considerable differences between what is relevant to an investment fund and what is relevant to an investor in other types of issuers. AIMA would be happy to work with the CSA in developing the template for such a disclosure document.

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$150,000 Exemption

We applaud the harmonization of the minimum amount investment exemption set out in the various statutes and rules, the adoption by all of the CSA of this exemption and its availability to mutual funds and non-redeemable investment funds. We would ask, however, that this exemption also include *in specie* contributions that have a fair value of $150,000. We believe that, so long as the assets being contributed are consistent with an investment fund's investment objectives and restrictions and are valued in the same manner that all of the portfolio assets of the investment fund are valued, there can be no manipulation of the value of assets being contributed so as to enable the contributor to rely on the exemption.

Furthermore, we would encourage the CSA to consider allowing the $150,000 exemption to be sprinkled among investment funds that are managed by the same entity. We believe that the same rationale, which deems a person who has $150,000 to invest in a single investment to be sophisticated enough to not require a prospectus and not require the assistance of a registered dealer, can also be applied to an investor who invests in two or more funds managed by the same manager and thereby enjoy the benefits of diversification.

Additional Investments and Re-Investment

We urge the CSA to consider expanding the exemption set out in Sections 2.18 and 2.19 so as to permit an investment fund which has more than one class and series of units, where the value of the units of each such class and series is based on the same pool of portfolio assets, the flexibility to permit re-investment and/or additional investments in classes or series of the same investment fund other than the class or series originally purchased by the investor. Where classes and series are created solely for administrative purposes, to facilitate differing fee structures and the calculation of management and performance fees based on the value of an individual investor's investment in the Fund, there is no policy reason to treat an investment in one class or one series as being different from an investment in another class or another series of the same Fund.

Limited Market Dealers

We note that, despite the attempt by the CSA to develop a national harmonized prospectus and registration exemption regime, Ontario and Newfoundland continue to require certain market intermediaries who participate in a private placement of securities, which have otherwise been issued in reliance on certain registration exemptions, to be registered as limited market dealers. We question the policy or regulatory goal of such registration in light of the lack of proficiency, capital and insurance requirements which are imposed on such market intermediaries. We believe that this category of registration creates additional confusion in the marketplace and makes it difficult for an issuer to have a unified marketing and distribution plan for all of Canada.

We applaud the AMF's decision to permit issuers relying on certain prospectus exemptions to also have available to them parallel registration exemptions.

As participants in an industry which relies on the prospectus and registration exemption regime in Canada in distributing securities of investment funds, AIMA's Members are fully in support of all initiatives to harmonize prospectus and registration exemptions in Canada. Again, we applaud the spirit in which proposed NI 45-106 has been developed and encourage all members of the CSA to adopt a single set of rules and to make the Canadian market more accessible and more friendly to investors and market participants alike.

We appreciate the opportunity to provide the CSA with our views on this proposal. Please

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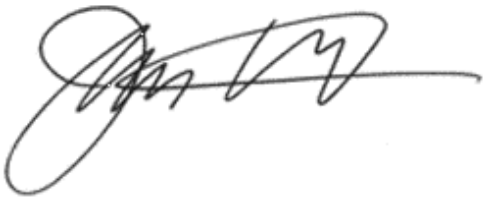
feel free to direct any questions or comments that you might have to any of the following members: Jim McGovern, Arrow Hedge Partners Inc. (416) 323-0477; Ron Kosonic, Borden Ladner Gervais LLP (416) 367-6621; or Gary Ostoich, McMillan Binch LLP (416) 865-7802.

Yours truly,

ALTERNATIVE INVESTMENT MANAGEMENT ASSOCIATION - CANADA CHAPTER (AIMA - Canada Chapter)



James McGovern, Chairman, AIMA Canada

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