December 13, 2018

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

RE: Proposed Amendments to
National Instrument 81-105, Companion Policy 81-105CP and Related Consequential Amendments

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 funds, futures funds 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 1,900 corporate members in more than 60 countries, including many leading investment managers, professional advisers and institutional investors and representing over $2 trillion in assets under management. AIMA Canada, established in 2003, now has more than 150 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.

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 typically invested in pooled funds managed by a member and are from sophisticated institutional and high net worth investors that qualify as "accredited investors"/"permitted clients" under Canadian securities laws.

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The Alternative Investment Management Association Canada Inc.

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 Canadian securities regulatory authorities: as Portfolio Managers, Investment Fund Managers, Commodity Trading Advisers 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.

For more information about AIMA Canada and AIMA, please visit our web sites at canada.aima.org and www.aima.org.

Comments

We are writing in response to the proposed amendments to NI 81-105, its Companion Policy and the related consequential amendments (the "**Proposed Amendments**") referred to in the Canadian Securities Administrators ("**CSA**") Notice and Request for Comment dated September 13, 2018 (the "**Request for Comment**").

In Annex A of the Request for Comment, the CSA asks whether investment products that are not currently subject to NI 81-105, such as non-redeemable investment funds, certain labour-sponsored investment funds, structured notes and pooled funds, should also be subject to NI 81-105. While AIMA Canada supports the overall objectives of the Proposed Amendments, for the reasons discussed below, we do not think that the restrictions imposed by NI 81-105 should apply to alternative investment products that are not subject to NI 81-102 and it would be inappropriate for the CSA to amend NI 81-105 in the future to extend its scope to include such alternative investment products.

Section 1.3 of NI 81-105 states that it applies to (i) a distribution of securities of a mutual fund that offers or has offered securities under a prospectus or simplified prospectus for so long as the mutual fund remains a reporting issuer; and (ii) a person or company in respect of activities pertaining to a mutual fund referred to in (ii). It is appropriate for Canadian securities regulators to regulate the types of compensation that may be paid in connection with the distribution of mutual fund securities under a prospectus or simplified prospectus, as the types of investors who purchase such securities are typically retail investors who have no opportunity to negotiate the terms of the offering.

Conversely, the types of investors who purchase non-prospectus offered alternative investment products, including non-redeemable investment funds, are sophisticated investors who understand the terms of their investments. Often seed capital or key investors are given the opportunity to the negotiate the terms of the offering and subsequent investors may enter into side letters. On this basis, Canadian securities regulators have historically taken the view that the best way to promote investor protection and market efficiency in connection with the distribution of these alternative investment products is to restrict the types of persons that may purchase such products (i.e. persons capable of purchasing on a prospectus exempt basis) and by regulating the registrants who distribute, manage and select investments in relation to these products.

An additional difference between mutual funds and alternative investment funds worth noting relates to their sales and distribution practices. Mutual funds generally are sold through broad distribution channels, including IIROC dealers and mutual fund dealers. In contrast, alternative investments funds typically rely on more relationship based investing with their clients and distribute their own investment products. There are examples where non-redeemable investment funds and other alternative investments engage third party dealers. However, those arrangements rarely include sales and compensation practises like embedded trailing commissions.

If the CSA were to extend the scope of NI 81-105 to include non-prospectus offered alternative investment products, it would be departing from the approach that it has historically taken towards the regulation of these alternative investment products even though the rationale for regulating them differently than mutual fund securities distributed pursuant to a prospectus or simplified prospectus will not have changed. Moreover, it would be diverging from the often seen global practice of differentiating the regulation of distribution related charges between products sold to retail investors and products available solely to sophisticated investors. In the United States, for example, the Securities and Exchange Commission limits the amounts of

front and back end loaded and trailing commissions that can be paid in relation to mutual funds but such rules do not apply to private funds. Similarly, in the United Kingdom, following the retail distribution review in 2013, the Financial Conduct Authority has limited distribution related fees for funds offered to retail investors, but such rules do not apply to funds sold privately to professional investors. Given the fundamental differences between the two types of funds and the current regulatory practices in other key jurisdictions, it would be inappropriate to regulate non-prospectus offered investment products in the same manner as prospectus offered mutual funds by extending the scope of NI 81-105.

Further, it would be problematic in the non-redeemable investment fund space to prohibit a particular type of fee arrangement. Sophisticated investors who are the purchasers of prospectus exempt products assess fee arrangements across all manner of fees and charges in respect of a fund and are often entitled to invest across differing fee arrangements. Variations in management fees, performance compensation and referral and dealer charges are all considered by investors before choosing the appropriate investments and structures for her/him or it. It would not be a benefit to investors to mandate the prohibition of one of the various types of fees related to a potential investment. In particular, while deferred compensation funded up front by managers is far less common for hedge funds and other alternative investments, investors may prefer it to paying fees directly themselves.

Investment fund managers are subject to a duty of good faith under section 116 of the *Securities Act* (Ontario) and corresponding provisions of other securities legislation. Many improvements have been made to the disclosure requirements related to fees and expenses charged by all types of funds. In light of managers' duty of good faith and requirements for full, clear and comprehensive disclosure of financial arrangements related to the sale of non-redeemable investment funds, AIMA is of the view that it is not in the best interest of investors to prohibit certain types of fee arrangements, including trailer fees funded by managers or for NI 81-105 to apply generally to such products. Moreover, if the CSA's intention is to enhance existing conflict mitigation rules, then we think that this would be better addressed through the targeted reforms to NI 31-103 proposed in June of this year.

We appreciate the opportunity to provide the CSA with our views on these Proposed Amendments. Please do not hesitate to contact the members of AIMA set out below with any comments or questions that you might have. We would be pleased to meet with you to discuss our comments and concerns further.

Yours truly,

ALTERNATIVE INVESTMENT MANAGEMENT ASSOCIATION

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