May 5, 2021

50 Wellington Street W.
5th Floor
Toronto, ON M5L 1E2
Canada
+1 416 364 8420
canada@aima.org
canada.aima.org

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

Delivered by e-mail: comments@osc.gov.on.ca & consultation-en-cours@lautorite.qc.ca

The Secretary, Ontario Securities Commission
20 Queen Street West 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs, Autorité des marchés financiers
Place de la Cité, tour Cominar 2640, boulevard Laurier, bureau 400 Québec (Québec) G1V 5C1

Dear Sirs/Mesdames:

RE: Proposed Amendments to National Instrument 33-109 and related instruments; Proposed Amendments to National Instrument 33-109 *Registration Information* and Changes to Companion Policy 33-109CP *Registration Information* and Related Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and Changes to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the "Proposals")

About the Alternative Investment Management Association (AIMA)

AIMA was established in 1990 as a direct result of the growing importance of alternative investments in global investment management (covering primarily hedge funds, private credit, liquid alternative funds and now digital assets). 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 approximately 2,000 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, has approximately 140 corporate members.

Under our pillars of Advocacy, Education and Communication, the objectives of AIMA are to provide an interactive and professional forum for our membership; act as a catalyst for the industry's future development; provide leadership in sound practices; enhance industry transparency and education; and 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, though some are some of our country's largest traditional asset managers. 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 investment exemptions. Manager members also have multiple registrations with the Canadian securities regulatory authorities: as Portfolio Managers, Investment Fund Managers, Commodity Trading 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.

For more information about AIMA Canada and AIMA, please visit canada.aima.org and www.aima.org.

Comments

We are writing in response to the above noted Proposals.

Overall, AIMA supports the objective of reviewing registration requirements, exemptions, ongoing obligations and information with the goal to provide clarity on the information to be submitted, to help individuals and firms provide complete, accurate and meaningful registration information and to reduce the regulatory burden of doing so, while allowing the CSA to receive the information necessary to carry out its regulatory roles, including ensuring investor protection.

From a national and global context, we believe it is critical that the Canadian registration system be competitive for the sustained success of both our broader national alternative investment management industry and registrants within it. In comparison with other jurisdictions, Canadian registrants have consistently commented on the excessive amount of time, fees, administration, legal advice and ongoing follow-up required for obtaining and maintaining registration, both in select CSA jurisdictions and in their home province, exceeding that of similar registration categories in other jurisdictions, most notably the U.S. For small, emerging manager businesses and registrants generally, it is critical to minimize regulatory burden associated with the initial and ongoing registration processes where additional reporting requirements are not material to maintaining investor protection.

In summary, AIMA has three main areas of concern.

Conflict with Client Focused Reforms ("CFRs")

In our view the major proposed change regarding Outside Activities duplicates the conflicts requirements set out in the Client Focused Reforms ("CFRs") and increases regulatory burden through additional reporting.

A major portion of the CFRs' requirements is the identification and management of Conflicts of Interest ("COIs"). The industry has accepted the CSA's delegation of this responsibility to the registered firms and individuals and is working diligently on implementing the requirements in 2021. Given this responsibility of a registrant, in our opinion the reporting of Outside Activities, the principal purpose of which is to identify potential COIs, is redundant and unnecessary and increases the

regulatory burden through additional reporting. We submit that the management of a potential COI that arises due only to a registered individual's multiple time commitments is not an issue relevant to fitness for registration, and managing this concern should be the responsibility of the firm (as required under the CFRs) and the individual registrant. Oversight, monitoring and ensuring adherence to a firm's internal and regulatory obligations, including managing COIs such as Outside Activities, are currently responsibilities of CCOs and will continue to be so under the CFRs.

Conflict with Other Implementation Requirements

AIMA is concerned that the proposed implementation deadline of December 31, 2021 conflicts with several other implementation deadlines and is thus overly burdensome. Firms are currently implementing the CFRs and the proposed requirements regarding Vulnerable Clients, which the CSA has indicated it intends to finalize this year for implementation at the end of 2021. These are major projects which require amended policies and procedures, potential systems changes and significant training. Layering on additional requirements at this point would require firms to revisit and amend existing project plans. We request that the CSA amend the implementation deadline for the Proposals to June 30, 2022.

Proposals are Overly Prescriptive

AIMA would like to emphasize the avoidance of overly prescriptive measures given that a "one-size-fits-all perspective" leads to inefficiency given the variety of registrants, business models, clients and products and services. Throughout the Proposals, various items are categorized in very specific but ultimately arbitrary ways. For example, doctors and nurses are deemed to be positions of influence but other health care providers are not, leaving registrant firms to make judgments without adequate guidance from CSA.

AIMA is concerned that other new requirements might have a chilling effect on worthwhile community involvement by registrants. By requiring reporting (and ultimately, potential regulatory review) of all activities for entities for which a registrant is a director or officer and spends a specified amount of time, the Proposals may discourage registrants from serving in positions of responsibility for organizations crucial to Canadian civil society that have little or nothing to do with the securities industry. AIMA questions whether the CSA intended to require a registrant to report her service as an officer or director of her child's minor hockey association.

We ask that the CSA review the Proposals to ensure that they are more principles-based. If specific guidance is to be provided to assist registrants, it should be removed from the Instrument and included in the Companion Policy.

Further comments are organized below in the order of the consultation questions, with Other Comments following.

#2 Considering the proposed framework for reporting of Outside Activities, are there categories of Outside Activities that should not be reportable to regulators? If so, please describe what categories of Outside Activities should not be reportable to regulators.

Overall, the Categories outlined broadly should only qualify as material when an individual is engaging with clients or prospective clients.

With regard to Category 3, we submit that it should be removed. The historical component of the Category, i.e., looking back 7 years to identify any capital raising activities, is overbroad and does not focus on present potential COIs. This is inconsistent with the intent of Item 10 and Schedule G of the F4 and Item 7 and Schedule D of the F7, in both of which a person is required to outline their roles and responsibilities with their sponsoring firm, i.e., their current activities. All the other categories of Outside Activities, as defined, are current activities being performed by the registrant. It would be

inconsistent and confusing to registrants to have a historical category captured here. Furthermore, the meaning of "involved in raising money" is not clearly explained and when it encompasses uncompensated activity, risks creating significant regulatory burdens without clear benefits.

Any past activities are better captured in Item 11 and Schedule H of the F4. Item 11 specifically requests a history of employment and other activities for the past 10 years, so any capital raising activity in the past 7 years would be included here. If the CSA has concerns about this specific type of historical activity not being addressed, then the instructions for Item 11 should be amended to specifically identify it for inclusion.

If the CSA wishes to capture any current or planned capital raising activity, then the definition "involved in raising money for an entity through the issuance of securities or derivatives or promoting the sale of an entity's securities or derivatives outside of your activities with your sponsoring firm" should be added to Category 4 since it could be considered to be the provision of financial services.

With regard to Category 6, we submit that it should also be removed. The requirement to identify, monitor and report Outside Activity exceeding 30 hours per month conflicts with the requirements placed on a firm and its CCO under the CFRs (see our comment above). Under the CFRs a firm is required to have policies and procedures in place to identify and control conflicts of interest, of which an ability to commit an appropriate amount of time to a position would be one. Identification and control of this conflict is not correlated with an individual's fitness for registration.

If Category 6 is to be retained, we submit that the first bullet (*activities to which any of Categories 1 to 5 apply*) be removed, as it is duplicative. Categories 1, 2, (3 – see above), 4 and 5 already capture this information with no time requirement specified. We also submit that the third bullet "*all other activities (whether or not you are compensated) for which you are a director or officer of, or hold an equivalent position with or for the entity, or are a partner or shareholder of the entity*" be removed, as it is too broad and has no bearing on the particular activity's materiality to any COIs with clients or prospective clients. In particular, in our view, the new requirement to include a "shareholder" (which is a 10% direct or indirect voting security test) role is overlay expansive and unnecessary.

Further, if Category 6 is retained, we believe that when an individual engages in an activity for multiple affiliated entities within a corporate group, i.e., acts as a director for multiple general partners, such roles are not "outside" activities (because they relate to the firm's business) and should not be reportable. This would assist in reducing the regulatory burden of multiple filings when there is no conflict.

#4 Is 7 years an appropriate amount of time to report on past Outside Activities that involved raising money for an entity through the issuance of securities or derivatives or promoting the sale of an entity's securities or derivatives? Please explain your view.

Please see our comments above and below under Other Comments with regards to the Required Timeframes for reporting various items.

#5 Is 30 hours per month (based upon 7.5 hours per week for four weeks) an appropriate cumulative minimum time threshold for reporting all Outside Activities? Please explain your view.

See our comments re Category 6 in Q#2 above.

While we believe that whether the cumulative amount of time spent on Outside Activities interferes with a registrant's capability to carry out their duties should be a matter of judgement left to the sponsoring firm, we appreciate the provision of a bright line test to establish an industry standard.

#6 Will Regulated Persons have sufficient time to report Outside Activities given the Proposed

Revisions? If not, please explain the challenge in reporting Outside Activities within the proposed revised deadline.

The Proposals continue the requirement to report changes in information in a specified number of days after the change. This requirement necessitates that a registrant have policies and procedures in place to continually monitor for changes and to report them on a staggered basis depending on when the change occurred. This can be an onerous process, particularly in large firms with many registered individuals.

We submit that the Proposals should be amended to generally require the reporting of changes in information 30 days after a quarter end, with specified exceptions requiring reporting within 15 days of a change. This would allow for the standardization of operational processes, enhancing efficiency and reducing regulatory burden and most importantly, the establishment of key controls. The exceptions would be with respect to items where it is more critical that the regulator be aware of current information. In our view most of the other information is not critically time sensitive. The exceptions requiring reporting within 15 days would include the following:

Form 33-109F4

Item 2 Residential Address – Current residential address, including telephone number.

Item 13 Regulatory Disclosure #1(d), 2(c), 3(c) – Re the institution of disciplinary proceedings.

Item 15 Civil Disclosure – Re the institution of civil actions alleging fraud, theft, deceit etc.

Item 16 Financial Disclosure – Re the institution of bankruptcy, insolvency etc. arrangements.

Form 33-109F6

Part 2 Contact Information #2.1, 2.2, 2.3, 2.5, 2.6 – Re changes in address and key registered contacts.

Part 5 Financial Condition #5.4 to 5.10 – Re changes in bonding and insurance coverage and bankruptcies or appointment of a receiver.

Part 7 Regulatory Action – Re institution of any regulatory actions.

Part 8 Legal Action – Re any criminal or legal actions.

#7 Are there other positions that should be considered positions of influence? If so, please describe these positions and explain why they should be positions of influence.

The positions of influence that may arise with dealers in a retail environment typically do not occur in the alternative investment industry. As a result, we recommend taking a principles-based approach with this conflict since it is addressed within the CFRs (see our comments above). In our opinion the proposed s. 13.4.3 (2) of NI 31-103 listing positions of influence should be moved to the Companion Policy to be consistent with other interpretive comments. In addition, any such list should be introduced with the comment "could include the following". This would reflect the fact that whether someone **is** in a position of influence is a matter of judgment, as is reflected in the draft Companion Policy. The enumerated list is itself a judgment.

#8 Is "susceptibility" the appropriate term to describe the impact of the influence on the individual subject to the influence? If not, please explain why not and propose alternative language.

Susceptibility implies a higher level of "may be" influenced and could be assumed when no influence exists. Per the Oxford dictionary, susceptibility is "the state or fact of being likely or liable to be influenced or harmed by a particular thing." We would suggest including in the Companion Policy wording to indicate that susceptibility is a question of fact and circumstances for the specific individual; for example, "…could be considered to be subject to the registered individual's influence" and is subject to a reasonable person test with a matter of judgment made at the time.

#14 Are there other circumstances where a notice of change in registration information may be delegated to an affiliate? Please describe.

We are supportive of the ability of a registered firm to delegate to an authorized affiliate the duty to notify the securities regulators of a change to certain items or parts of the Form 33-109F6. We suggest that this ability extend to authorized "*specified* affiliates" as defined in Form 33-109F6, as this is consistent with the requirement to provide information on "specified affiliates" in many items of the Form 33-109F6.

#18 Do you see any challenges in reporting the title(s) used by Individual Registrants? If so, please explain.

In line with the goal of regulatory burden reduction, we submit that this would be burdensome. Titles are arbitrary by each firm and may change frequently while the role or responsibilities themselves may not change. If titles are specifically included, then changes would require reporting.

In our opinion the issue of titles has been adequately addressed in the CFRs with the addition of s. 13.18 Misleading Communications to NI 31-103. As noted previously the CFRs place the onus on the firm to manage titles and have established restrictions regarding the appropriate use of titles. What an individual is called is not relevant to fitness for registration. If the CSA would like to collect data for the announced titles project, it would be more efficient and appropriate to survey industry directly prior to rulemaking, rather than collect information through the registration process.

#20 What are your views on the transition plan for the proposed amendments to NI 31-103 relating to positions of influence?

The CSA Notice states (page 16) that "Where after the Proposed Effective Date there is a change to the registration information that was previously reported, we expect Regulated Persons will update the registration information for that change and will review and update any other registration information that is not complete or accurate in light of the Proposed Revisions."

We ask that the CSA clarify whether the intent is effectively that a complete review of existing Form 33-109F4 filings is expected as of the Proposed Effective Date, as there are other new or amended informational requirements, i.e., titles and outside activities, beyond just the positions of influence. If this is the case, then we submit that 6 months for transition to the new requirements is insufficient as firms will be required to conduct a complete review of all Form 33-109F4s. Our recommendation would be a one-year transition period.

Other Comments

Proposed Transition

Page 3 of the CSA Notice states "At this time, we are not proposing new forms or enabling Form 33-109F6 Firm Registration (Firm Registration Form) to be submitted in the National Registration Database (NRD). Any amendments to the registration information requirements will require changes to the NRD and NRD is currently anticipated to be replaced by SEDAR+ in 2023."

However, page 16 of the CSA Notice states, "Subject to the nature of the comments we receive and the time to make changes to NRD…".

We request that the CSA clarify if changes are going to be made to NRD to reflect the new information requirements and formats of the Form 33-109F4 filings, given the apparent contradictory statements noted above. We would appreciate clarification regarding how the new information on the applicable forms is to be submitted if NRD is not being changed.

Form 33-109F4 Registration of Individuals

Item 12 Resignations and terminations and Schedule I

a) The item begins with "Have you ever resigned or been terminated from a position or contract when, at the time of your resignation or termination, there existed an allegation that you:". We submit that the removal of the phrase "for cause", as exists in the current form, is inappropriate and should be restored, i.e. "Have you ever resigned or been terminated for cause from a position…". The proposed revised wording does not allow for the individual to rebut or indicate if they were subsequently cleared and is contrary to a presumption of innocence unless an appropriate review process has occurred. When there has been cause the implication is that the previous employer has met a higher level of proof.

b) The descriptions for items 1 and 2 include the reference "Contravention…of a sponsoring firm, of any industry association or of any authority exercising jurisdiction over specific business activities or professions". The reference to industry associations should be removed throughout the document as they are not self-regulatory organizations and any publications, i.e., best practice guides, do not have legal authority. We suggest that the reference to professions should be amended to "professions relevant to the registrable activity" so that only relevant activity is considered.

   The removal of "industry association" would also apply to section 2.3(b)(iv) of the instrument and to the F7 Item 4.

Item 13 Regulatory Disclosures and Schedule J

a) In Item 3(a) we suggest replacing "doctor" with "medicine" or "medical professions" as the field is much wider. This would be consistent with the discussion re positions of influence (see our response to Q#7 above).

b) In Item 3(c) the word "professional" that has been deleted should be restored. This would be consistent with section (b) and reflects the fact that the section is addressing non-securities regulation.

Required Timeframes for Information

We note that there are inconsistencies throughout the document in the timeframes applicable to providing information, as noted below:

F4 – Item 11 Previous employment and other activities

Information is to be reported for the last 10 years.

F4 – Item 12 Resignations and terminations

Information is to be reported no matter how far in the past it occurred.

F4 – Item 13 Regulatory Disclosures

Information is to be reported no matter how far in the past it occurred.

F6 – Part 4 Registration History

For item 4.1 Securities Registration, Item 4.3 Membership in an Exchange or SRO and Item 4.6 Registration for Other Financial Products information is to be reported for the last 7 years. For Item 4.5 Refusal of Registration information is to be reported no matter how far in the past it has occurred.

F6 – Part 7 Regulatory action, Part 8 Legal Action

Information is to be reported in respect of the last 7 years.

F4 – Item 14 Criminal Disclosure

Information is to be reported no matter how far in the past it occurred.

F4 – Item 15 Civil Disclosure

Information is to be reported for question 2 no matter how far in the past it occurred. (**NB** the wording for question 2 is missing from the draft blacklined document Annex B)

F4 – Item 16 Financial Disclosure

Bankruptcies – Information is to be reported no matter how far in the past it occurred, with a specific reference to even if more than 7 years ago.

Debt obligations – Information is be reported for the last 10 years.

Surety or fidelity bond and Garnishments – Information is to be reported no matter how far in the past it occurred.

F6 – Part 5 Financial Condition

Item 5.8 Bonding or Insurance Claims, Item 5.9 Bankruptcy and Item 5.10 Appointment of Receiver require information to be reported for the last 7 years.

F4 – Item 17 Ownership of securities and derivatives firms

Information is to be reported no matter how far in the past it occurred.

We request that the CSA review and synchronize the applicable time periods, taking into consideration how far in the past it is relevant to go in determining fitness for registration. In this regard we note that the *Consumer Reporting Act* (Ontario) s. 9(3) prohibits credit reporting agencies from reporting information regarding bankruptcies, judgements, debt repayments etc. more than seven years ago after discharge. In our opinion this statutory requirement should be respected in the collection of information. Alternatively, we believe that a consistent timeframe of 10 years across all categories of information would be reasonable and relevant.

Removal of Requirement to Report Expiry Date of an Insurance Policy

We are supportive of the removal of the requirement to file a Form 33-109F5 in connection with the change of expiry date of an insurance policy. We request that the CSA clarify that a notice of change in an insurance policy pursuant to section 12.7 of National Instrument 31-103 is also not required to be filed when the only change is to the expiry date.

We appreciate the opportunity to provide the CSA with our views on this consultation. 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 CANADA

By:
Claire Van Wyk-Allan, AIMA
Supriya Kapoor, Aurelius GRP
Sarah Gardiner, Borden Ladner Gervais LLP
Ian Pember, Glen Williams Consulting
Belle Kaura, Third Eye Capital