



Alternative Investment Management Association

The Managing Director
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Submitted by email to: Consultation@cimoney.com.ky

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Dear Sirs,

The Alternative Investment Management Association (AIMA)¹ appreciates the opportunity to comment on the Cayman Islands Monetary Authority (CIMA) consultation paper (the Consultation Paper) concerning the proposed Statement of Guidance for Regulated Mutual Funds - Corporate Governance (SOG-MF).

As CIMA acknowledges, international efforts to improve corporate governance standards have gathered pace in the last few years.² We support CIMA in their efforts to enhance the Cayman Islands' corporate governance standards in line with these improved international standards and consider that this enhancement is important for the Cayman Islands' standing as an international financial centre. However, we would encourage CIMA to bear in mind that any future regulation needs to be balanced against the costs it will entail, both direct and indirect, to ensure that the Cayman Islands can remain a competitive jurisdiction for the hedge fund industry.

We welcome CIMA's decision to issue guidance, rather than prescriptive rules, and its conclusion that that this guidance should be tailored specifically to all regulated funds established under the Mutual Funds Law (2012 revision) (as amended) (the MFL) rather than imposing an additional overlay of regulation on the directors directly.

Although we generally support the SOG-MF as written, we do think there is still room for some improvement in the following areas:

- References to 'continual' actions or duties: Sections 5.6.1, 5.8, 5.11, 5.12 and 5.12.3 each use the term "continuously" in reference to an action or duty to be performed. The term "continuously" suggests a full time engagement on a task, which is neither possible nor appropriate for a non-executive director in a delegated model and is not a practical or reasonable expectation by CIMA. As a result, we suggest replacing the word "continuously" with either "periodically" or "regularly". We believe the concept should be tied back to regular monitoring, which should be done sufficiently frequently depending on the complexity of the fund and any issues it may be dealing with, for example no less frequently than the board meetings referred to in sections 4.7 and 4.8. The same applies to the use of the term "continuing" in Sections 5.5 and 5.6 which should be replaced with "regular" for the same reasons;

¹ AIMA is the trade body for the hedge fund industry globally; our membership represents all constituencies within the sector - including hedge fund managers, fund of hedge funds managers, prime brokers, fund administrators, accountants and lawyers. Our membership comprises over 1,300 corporate bodies in over 50 countries.

² See paragraphs 18-19 of the Consultation Paper.

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- Use of the terms 'operator' and 'board': Not all registrants will have a board of directors (e.g. limited partnerships which act by their general partner, hence the defined term 'operators' in the MFL being necessary to accommodate this disconnect). Therefore, the fact that the SOG-MF appears to be inconsistent in the use of the terms 'operator' and 'board'³ is not helpful. To clarify the obligations and accommodate these differences, we suggest changing references to 'board' and 'board meetings' to refer, more generically, to the 'Operator' and 'Operator Meetings' and references to "s/he" should be "it/they";
- Oversight Function: An Operator's primary function is oversight and monitoring, rather than the primary responsibility for execution of functions such as administration and investment management. Those tasks should be delegable subject to the Operator's oversight and monitoring. Similarly, some of the matters set out in the SOG-MF would be better characterised as the Operator ensuring (or taking steps to ensure) that a task is done rather than seeking to leave the primary responsibility for the task in all instances with the Operator or implying a level of omnipresent involvement by the Operator in respect of supervision. This is relevant in Sections 4.3, 5.5.1, 5.5.2, 5.6, 5.12.2 (to the extent that it is not otherwise deleted as it is repetitive of Section 5.6.1) and 8.1;
- Conflicts of interest: AIMA suggests amending Section 4.4 to require the Operator to ensure that conflicts of interest are documented and appropriately disclosed rather than requiring the Operator to adopt a particular policy, which could be cumbersome as it would need to take into account the conflicts of interests policies required to be adopted by various of the fund's service providers including the investment manager;
- Board meetings: AIMA considers that it may be helpful to clarify in SOG-MF 4.8 that meetings of the board may take place in person or by conference call. We also consider that it would be more appropriate to change the requirement to have at least two meetings a year into a "general expectation" that two meetings will be held each year in order to give the Operator sufficient flexibility to hold more or less meetings each year depending on the circumstances of the fund in question;
- Documentation: AIMA considers that as a matter of best practice a record of attendees at any board meeting should be kept and a record of material decisions and/or considerations should be kept, however, the Operator should be able to "ensure that an accurate and clear record" is kept rather than having a provision which implies that the Operator itself must perform that function or that every immaterial discussion must be fully documented;
- Open communications: There are many circumstances under which it would be inappropriate for an Operator to have fully open communications with investors, whether for legal or regulatory reasons or otherwise. For that reason, we believe that the requirement in Section 5.3 to "communicate openly" with investors is too broad. We suggest revising this provision such that the Operator would only be obligated to communicate matters that it was properly able to disclose.
- Relations with the Authority: AIMA recommends introducing a materiality threshold in Section 7.1 to avoid CIMA being inundated with disclosure, especially as this provision as written would capture non-compliance with laws, regulations, rules and standards imposed around the world if they are applicable to the fund; and
- Risk management: AIMA considers that Section 8.1 of the SOG-MF should include further guidance on the practical aspects of how to demonstrate compliance.

³ For example, 7.1 and 7.2 state "The board and its operators" whereas this should just say "Operator" which is defined as the Board, Partner or Trustee and 8.1 states "The Board" but should be the "Operator".



In addition to the points above, we note Section 2 of the SOG-MF goes to great pains to make clear that the SOG-MF provides “guidance” on the “minimum expectations” and “emphasizes the factors Operators should consider” (emphasis added) while not being “a prescriptive or exhaustive guide” to CIMA’s governance expectations. However, CIMA then states in Section 3.1 of the SOG-MF that there are regulatory actions that can be taken “where the governance of a Regulated Mutual Fund does not meet the governance standards endorsed in this Guidance”, suggesting strongly that the Guidance is in fact prescriptive despite the statement to the contrary in Section 2.3. Is the SOG-MF really just guidance or is there intended to be active policing of these requirements which should then be treated as prescriptive? If the latter, how does CIMA envision the policing to work?

We hope you find our comments useful and would be more than happy to answer any questions you may have in relation to this submission.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Jiří Król". The signature is fluid and cursive, with the first name "Jiří" and the last name "Król" clearly distinguishable.

Jiří Król
Deputy Chief Executive Officer
Head of Government & Regulatory Affairs