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Qualified Investment Consultation  
c/o Director General, Tax Legislation Division  
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Submitted via email: QI-consultation-PA@fin.gc.ca

July 15, 2024

**Re: Consultation on Qualified Investments for Tax-Advantaged Savings Plans**

The Alternative Investment Management Association (AIMA)<sup>1</sup> wishes to respond to the Department of Finance Canada consultation, announced in the Federal Budget 2024, on how the qualified investment rules could be modernized on a prospective basis to improve the clarity and coherence of the registered plans regime<sup>2</sup>.

AIMA welcomes the broad aims of the consultation. In addition, we encourage Finance Canada to extend the range of qualified investments to include alternative funds which (as in equivalent regimes in other jurisdictions such as the United States) would offer broader investment choice for Canadians investing through their registered plans.

In summary, we consider that these principles should be followed:

- Rules applying for these purposes should be harmonized for all plans, with differences in approach only when these are required by the nature of the type of plan in question.
- Eligibility of plan investments should primarily be a matter of financial regulation and

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<sup>1</sup> The Alternative Investment Management Association (AIMA) is the global representative of the alternative investment industry, with around 2,100 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than US\$3 trillion in hedge fund and private credit assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programs and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 250 members that manage over US\$1 trillion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialized educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For more information, visit [www.aima.org](http://www.aima.org)

<sup>2</sup> <https://www.canada.ca/en/department-finance/programs/consultations/2024/consultation-on-qualified-investments-for-tax-advantaged-savings-plans.html>

therefore taxation provisions should be drafted in broad terms which reflect this, backstopped by the existing prohibited investment rules to prevent potential abuse.

- In reliance on financial regulation, plans would be able to consider a wider range of less liquid investment funds and financial assets which would be appropriate to the plan's investment needs generally based on know-your-client and suitability determinations.

Harmonization and simplification of the rules should deliver advantages to plan investors through benefits of scale in administration and operation as well as making available a wider choice of investments.

We note that if this approach permits increased availability of alternative funds established and/or managed in Canada that invest in primarily Canadian assets, this will also support the government's wish for an increase in Canadian-based investments.

We set out more detailed comments in the annex.

We would be happy to elaborate further on any of the points raised in this letter. For further information, please contact Paul Hale, Managing Director, Global Head of Tax Affairs at [phale@aima.org](mailto:phale@aima.org) or Claire Van Wyk-Allan, Managing Director, Head of Canada and Investor Engagement, Americas at [cvanwykallan@aima.org](mailto:cvanwykallan@aima.org).

Sincerely,

Paul Hale, AIMA

Claire Van Wyk-Allan, AIMA

AIMA Canada Working Group members

## Annex

*The consultation invites responses on five questions which we set out below. Given the nature of their alternative investment strategies, the first two of these are of less relevance to AIMA's members.*

1. Should the rules relating to investments in small businesses be harmonized to apply consistently to all registered savings plans, and if so, how?

Unless in relation to a particular type of plan there is a compelling policy reason to the contrary, this would be a sensible step to take.

2. Should annuities that are qualified investments only for RRSPs, RRIFs, and RDSPs continue to be qualified investments?

We have no views on this matter.

3. Are the conditions that certain pooled investment products must meet to be a qualified investment appropriate, including the ongoing value of maintaining a formal registration process for registered investments?

We believe that the better approach would be to rely on financial regulation to determine the general suitability of investments (including pooled investment products) coupled with prohibited investment rules to counter potential abuse. This approach has been adopted in other jurisdictions such as the US and the UK:

- In the US, in respect of ERISA/401k plans there is no list of approved investments. The plan operator, in investing plan assets, must exercise the judgment that a prudent investor would use in investing for their own retirement. The Internal Revenue Code contains requirements such as a prohibition on transactions in collectibles and a restriction on investment in precious metals. Transactions with disqualified persons may result in a tax charge.
- In the UK, the Financial Conduct Authority issued rules in 2014 which apply to regulated firms whose permitted business includes establishing, operating or winding up a personal pension scheme. Under these rules, investment is permitted, subject to usual due diligence, in "standard assets". These include, in addition to cash, quoted shares and securities, etc., investments such as exchange traded commodities, physical gold bullion, and investment notes (structured products). A standard asset must be capable of being accurately and fairly valued on an on-going basis and readily realised within 30 days, whenever required. Investment in non-standard assets imposes more obligations on the regulated firm, so this part of the market lies with private wealth managers rather than mass retail operators. The tax legislation relating to pension schemes does not impose restrictions on investment, but certain assets, such as tangible moveable assets and residential property, may become subject to tax. Therefore, in practice these are not accepted by personal pension scheme operators as non-standard assets. Unauthorised payments and other transactions may result in a tax charge.

If a similar structure were developed in Canada, it might comprise tiers of permitted investments as determined by the financial regulators:

- Investments that currently qualify as qualified investments, including quoted equities and debt securities, cash deposits, interests in mutual fund trusts or shares of mutual fund corporations (including REITs)
- Other investment funds that provide an annual (or more frequent) valuation.
- Limited liquidity instruments, such as interests in unquoted property funds offering limited redemption opportunities
- Illiquid instruments, such as interests in private equity funds, infrastructure funds, etc.

The financial regulators (as opposed to the tax rules) may determine that particular classes of investment are not suitable for certain registered plans, given the policy objectives underlying the plan. Additionally, plan promoters and operators should have regard to know-your-client ("KYC") and suitability determinations. For example, registered dealers when recommending securities for a client are required to implement KYC procedures under National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registration Obligations ("NI 31-103"), including ensuring that they have collected sufficient information to enable them to make a property suitability determination, including the client's personal circumstances, financial circumstances, investment needs and objectives, investment knowledge, risk profile and investment time horizon (Section 13.2(2) of NI 31-103).

If reliance is placed on the broader financial regulatory regime, the need for a formal registration process is removed. This in turn would make a wider range of investments available to plan investors, with potential cost savings and other benefits from efficiency of scale.

This change should also reduce discrepancies between the range of investments that can be made by similar types of retirement plans. For example, currently an RRSP (including a group RRSP) is only permitted to invest in qualified investments eligible to be held in an RRSP, subject to the prohibited investments rules. A defined contribution pension plan may invest in any investment, subject to a similar set of prohibited investment rules. While there are a variety of reasons an employer or individual may prefer to set up an RRSP or group RRSP as a retirement savings plan over a defined contribution pension plan, including cost, contribution requirements and flexibility for early withdrawals, the types of investments that can be held in a plan should not be a motivating factor.

4. Should qualified investment rules promote an increase in Canadian-based investments, and if so, how?

In general, designing investment rules to benefit a particular sector is likely to produce a limited and narrowly based outcome. Investors must be sufficiently confident in the prospects of a return on an investment before they will commit to it, whatever the policy incentive. A better approach is to improve access to investment, so that new sources of capital become available. This has become particularly important as globally banks have become less able to lend to the SME sector.

There are two initiatives that should be considered:

- Facilitating investment in products such as infrastructure, venture capital, private equity and private credit funds which would provide access for registered plans to a market that is not readily available to them currently. These are necessarily illiquid or limited liquidity in nature but potentially suitable as investments if permitted.

In the US, business development companies (BDCs) have become a significant source of private credit, which is a rapidly growing sector globally as a source of non-bank loan finance. BDCs raise capital from private investors, directly or their savings plans, and lend it to the SME sector primarily.

The EU created a fund type European Long-Term Investment Fund (ELTIF) in 2015 which had limited success due to design deficiencies. It has now been remodelled (ELTIF 2.0) as part of the EU's project to make its Capital Markets Union more effective. Some of the defects have been addressed and it seems more attractive.

The UK has established its own version of the ELTIF, the Long Term Asset Fund (LTAF) with the intention of promoting access for pension schemes to private markets assets such as infrastructure. Unfortunately, it has retained some of the disadvantageous features of the ELTIF and has had limited take up so far<sup>3</sup>.

- Regarding further pension investment in Canada, it is important to note that Canadians should continue to be very proud of the global leadership and strength of their pension system delivering top-tier retirement outcomes. That said, Canada is currently becoming a casualty of global consolidation of the asset management industry. PwC reports that half of global assets under management look to be controlled by just ten firms by 2027, with none of these ten firms domiciled in Canada.

For managers everywhere, costs of talent, operations, compliance and trading are all rising, especially as cybersecurity, AI and other technological tools become table-stakes in the race to deliver differentiated, risk-adjusted returns.

Canada has always been a more difficult and costly market in which to build asset management businesses compared to the US. Between multiple provincial regulators, two official languages and heightened registration, compliance and documentation measures in comparison to global peers, it is a burdensome and lengthy endeavour.

Access to capital and distribution is also difficult, with wealth channels tightly controlled predominantly by globally renowned bank-owned gatekeepers and Canada's state-of-the-art pension systems featuring world-class investment teams in-house. As global competition intensifies, the next dollar invested by a Canadian investor is much more likely to be allocated to a US or global manager than one within Canada. While Canadian investors benefit greatly from the added product choice from such outside managers, Canada's job market, industry ecosystem and economy will suffer.

We would encourage federal and provincial governments, their respective securities regulators and Canadian institutional investors alike to help facilitate emerging manager programs to foster support for asset management entrepreneurs. These types of programs have been highly successful in Quebec and over a dozen programs across various US State plans, both in delivering investment returns, advancing

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<sup>3</sup> AIMA and the ACC provided considerable engagement to the EU Commission on ELTIF and ELTIF 2.0 and were a lead participant in the Bank of England's LTAF project group. We would be pleased to provide further analysis if this would be of assistance.

diversity, equity and inclusion goals and job creation. To read further on this subject, see the AIMA white paper *Building support for emerging managers in Canada*<sup>4</sup>.

We also request that the Government should consider revising taxation rules where these disadvantage Canadian funds and other investment products, and so act as a barrier to investment. In particular, the tax treatment that applies in respect of futures, options and other derivatives drives investors to choose US or other non-Canadian funds over the Canadian mutual funds that are permitted to be marketed to them.

5. Are crypto-backed assets appropriate as qualified investments for registered savings plans?

Consistent with the approach adopted in this submission, we consider that this is primarily a matter for the financial regulators and, acting within the regulatory parameters, the operators of registered savings plans.

Canada was an early adopter of exchange traded funds backed by crypto assets, and these are popular vehicles for Canadians to invest in this sector. There is no basis to treat these ETFs differently from other ETFs from a qualified investment perspective. Similarly, as described in greater detail above, the mere fact that a fund is structured through a different vehicle but provides similar risk and return profiles to one of these ETFs should not affect the eligibility for investment in a registered plan.

### **About 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. 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 2,100 corporate members in more than 60 countries, including many leading investment managers, professional advisers and institutional investors and representing over \$2.5 trillion in assets under management. AIMA Canada, established in 2003, has approximately 160 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 \$100 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.

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<sup>4</sup> <https://www.aima.org/global-network/aima-in-the-americas/canada/aima-canada-publications/aima-canada-emerging-alternative-manager-advocacy-.html>

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 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](http://canada.aima.org) and [www.aima.org](http://www.aima.org).