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Ontario Securities Commission

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The Secretary
Ontario Securities Commission
20 Queen Street West
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Dear Sirs/Mesdames:

RE: OSC Staff Notice 11-784 Burden Reduction

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 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 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 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 OSC Staff Notice 11-784 *Burden Reduction* (**OSCSN 11-784**). Overall, AIMA Canada supports the objective of reducing regulatory burden and commends the Ontario Securities Commission (**OSC**) for its initiatives and ongoing projects to date. This response is organized based on the areas of focus outlined in OSCSN 11-784 and concludes with general comments and recommendations based on some of the current challenges that our members face in conducting business in the alternative investments industry.

We note that AIMA has submitted comments in response to ongoing CSA initiatives, such as the proposed Client Focused Reforms, proposed Derivatives legislative & proposed Mutual Fund Sales Practices.[1] We do not intend to repeat those comments here and understand that AIMA's prior submissions will be considered as part of the OSC's review of regulatory burden.

A. Operational changes for regulatory branches and offices

1. Are there operational or procedural changes that would make market participants' day-to-day interaction with the OSC easier or less costly?

We submit that a few of the operational and procedural changes the OSC could undertake to improve market participants' interactions with the OSC include sharing information more effectively between branches, assigning a designated relationship manager to each registered firm and having the OSC join the passport system.

Improve Information Sharing Between Branches: OSC Staff (**Staff**) should implement more effective methods (technological or otherwise) to permit information sharing between branches in a timely and efficient manner. It is unnecessarily burdensome for market participants to be asked to provide information to one branch of the OSC when such information has already been provided to another branch. For example, such duplicative requests often occur when one of our members applies for exemptive relief from rules which fall under the purview of the Investment Funds & Structured Products Branch and is asked to provide detailed information that it has already provided to the Compliance & Registration Regulation Branch in connection with the registration of the firm and its individuals. The issue of inadequate information sharing is also highlighted when our members are subject to an OSC compliance review and are asked to supply detailed documents that have already been filed with the OSC in prior interactions.

Assign Relationship Managers: We recommend that a relationship manager be assigned to each registrant to improve consistency in approach and enhance the productivity of registrants' interactions with the OSC. A designated relationship manager would have the benefit of greater context with respect to a specific registrant and would also be able to significantly improve the OSC's ability to respond to registrant inquiries, keep track of a registrant's history, and have a deeper level of familiarity with respect to prior filings and previous dealings with the OSC. This

1 Proposed National Instrument 93-101 & Proposed Companion Policy 93-101CP; Proposed National Instrument 93-102 & Proposed Companion Policy 93-102CP; Proposed amendments to National Instrument 31-103 & Companion Policy 31-103CP ; & Proposed amendments to National Instrument 81-105, Companion Policy 81-105CP and Related Consequential Amendments

operational change may also reduce the likelihood of the OSC and market participants wasting time and resources on issues that have been dealt with previously.

Join the Passport System: It is unnecessarily burdensome for filers for whom the OSC is not the principal regulator to have to deal with and coordinate amongst two different regulators, for example on registration matters or when filing an exemptive relief application. This burden is not borne by filers for whom the OSC is the principal regulator and seems unnecessary given that if the application is novel, it would have to be reviewed by all of the members of the Canadian Securities Administrators (**CSA**) in any event.

2. Are there ways in which the OSC can provide greater certainty regarding regulatory requirements or outcomes to market participants?

We submit that the OSC could provide greater certainty to market participants in respect of its treatment of compliance reviews, clarifying the distinction between guidance and regulatory requirements and justifying the necessity of providing certain information when requested.

Compliance Reviews: Staff involved in compliance reviews could benefit from greater training in order to be as familiar with the requirements of applicable securities laws as possible. Compliance reviews should address areas of securities laws that are well established and not be used as an opportunity for Staff to establish new standards, guidance or rules. Further, legal compliance should be led by a member of the legal team at the OSC rather than the accounting group, as is often the case. Several of our members have been cited for major deficiencies and have spent tens of thousands of dollars on legal fees explaining to Staff how the member was in fact in compliance with applicable laws. Our members have also experienced inconsistencies in the approaches taken by reviewers, which creates an unlevel playing field within the industry and imposes different burdens on each registrant depending upon the reviewer's understanding of the alternative investments industry and of the particular firm. The annual report prepared by the chief compliance officer (**CCO**) of a registered firm is an example of where our members have expressed the OSC spends an undue amount of time considering form over substance and principle-based compliance systems.

Staff Guidance versus Regulatory Requirements: It is our members' experience that registrant regulatory requirements and obligations, as formalized and communicated during the compliance review process, are established by Staff in deficiency letters and other general guidance issued by the OSC and can often lead to the imposition of additional regulatory burdens. This is generally considered by our members to be "legislating by way of audit" or "regulation via notice or guidance". Some examples include the guidance provided by the OSC in the Annual Summary Report for Dealers, Advisers and Investment Fund Managers and statements included in the Investment Funds Practitioner (such as Staff's position regarding rehypothecation of collateral, as expressed in the April 2015 and March 2018 versions of the Investment Funds Practitioner). Although such statements do not have the force of law, they are often referred to by and end up having a significant practical effect on market participants by introducing uncertainty as to the rules versus Staff views and increased costs in conducting business.

Our members take a principles-based approach when developing their compliance programs and internal controls. Registrants look to the legislative requirements and rules under securities laws they are subject to, understanding that there may be a number of ways to achieve compliance with the rules and that Staff's guidance is an interpretation of how compliance may be achieved or how a certain rule may operate. Guidance issued in Staff notices or other publications, or

communicated through discussions with Staff, are taken into consideration. Depending on the particular facts and circumstances of the registered firm, this guidance may or may not be considered when updating policies and procedures and internal controls. Imposing obligations under securities laws based on Staff guidance and notices, which effectively bypass the usual public comment period, creates an unlevel playing field within the alternative investment industry by imposing different burdens on different registrants, requiring some firms to implement policies, procedures or controls in response to so-called deficiencies, while other firms may not be subject to such corresponding obligations.

We further submit that Staff guidance should contain permissive language rather than prescriptive language (i.e. "shall" and "must"), which suggests that guidance is mandatory. We encourage the OSC to ensure that consistent expectations are communicated to registrants on guidance and recommended practices so as not to impose additional regulatory burdens on market participants, and to provide greater clarity respecting Staff's interpretations and views as opposed to regulatory requirements that have the force of law.

Justification for Information Requests: Our members have expressed that it is an impediment to business to go through the process of responding to requests for information from the OSC when it is unclear why such information is required or how it is relevant to the regulatory matter at hand. As is the case when the OSC proposes to make new rules pursuant to its authority under the *Securities Act* (Ontario) (**Act**), the OSC should conduct a reasoned cost-benefit analysis and provide a description of the anticipated costs to market participants and benefits to investors associated with requesting the information sought (see for example section 143.2(2)7 of the Act in the rule-making context). The OSC should also clarify the purpose of seeking additional information or supplementary requests to market participants so that they are aware of such information's significance (see for example section 143.2(2)2 of the Act in the rule-making context).

3. Are there forms and filings that issuers, registrants or other market participants are required to submit that should be streamlined or required less frequently?

We submit that several of the forms and filings that market participants are required to submit are unnecessarily burdensome in terms of both the time required and costs associated with preparing such filings. For the reasons outlined below under each particular form or filing heading, we recommend that the OSC either reduce the frequency of requiring a given filing or eliminate the filing altogether. We submit that the OSC's statutory mandate would not be adversely affected as a result of implementing the changes proposed below.

Form 24-101F1 – *Registered Firm Exception Report of DAP/RAP Trade Reporting and Matching* (**Form 24-101F1**)

Section 4.1 of National Instrument 24-101 *Institutional Trade Matching and Settlement* (**NI 24-101**) requires a registered firm to deliver Form 24-101F1 to the securities regulatory authority no later than 45 days after the end of a calendar quarter in certain circumstances.

The purpose of reporting this information on the current timeline stipulated under NI 24-101 is unclear to our members, as the OSC or any other securities regulatory authority has yet to identify the use to which this information is put. Further, we submit that the information being collected is likely of limited utility to the OSC in furthering its statutory mandate. For example, for firms that that do not have large trading volumes, a single non-compliant trade will materially and negatively

skew trade matching details which, in the broader context, may not reflect a systemic trade matching issue. Conversely, for firms that have relatively high trading volumes, multiple instances of trade mismatching may not be identified if the reporting thresholds under section 4.1 of NI 24-101 are not tripped.

We recommend that Form 24-101F1 filings be reduced to either a semi-annual or annual basis. If the OSC consolidates and reviews data obtained from these filings and has meaningful quantitative data to share with registrants, we recommend that periodic updates and guidance be issued to identify trade matching statistics, issues and expectations.

Form 31-103F1 – *Calculation of Excess Working Capital* (**Form 31-103F1**)

Under section 12.14 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), a registered investment fund manager must deliver to the regulators annual and quarterly filings on Form 31-103F1.

We submit that the quarterly filing of Form 31-103F1 filings is unnecessary given that registrants have ongoing obligations to assess the particular circumstances of their business model, products and services, types of investors, and geographic locations to assess and customize their compliance program. Part of a registrant's effective compliance program within the context of a principles based regulatory regime is ensuring they are maintaining adequate working capital at all times. In light of such ongoing obligations, we submit that a regulatory burden is created by having to file Form 31-103F1 quarterly. Accordingly, we recommend that the quarterly Form 31-103F1 filings required for under section 12.14 of NI 31-103 be reduced in frequency to semi-annual filings, to match the production of semi-annual financial statements.

Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* (**Form 33-109F4**) – Item 10 – updates for outside business activities (**OBAs**)

The fundamental issue with OBAs are the potential conflicts of interest that can arise where a registered individual or permitted individual engages in activities other than with their sponsoring firm. Companion Policy 31-103 CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**Companion Policy 31-103**) states that registrants must disclose all OBAs in Form 33-109F4 (or Form 33-109F5 (as defined below) for changes in OBAs after registration). Section 4.1 of National Instrument 33-109 *Registration Information* (**NI 33-109**) requires that a registered individual or permitted individual must notify the regulator of a change to any information previously submitted in Form 33-109F4 with respect to OBAs within 10 days of the change.

We encourage the OSC to coordinate with the other CSA members and SROs to develop and issue a principles-based and consistent regulatory approach to the reporting of OBAs. We submit that inconsistent guidance and commentary as between the securities regulators and the self-regulatory organizations (**SROs**) has created confusion for registered firms and essentially results in all OBAs being reported, regardless of whether or not a conflict of interest may arise. While many OBAs do present a potential for conflict, not all OBAs do so.

We recommend excluding affiliated entities and personal holding companies from the requirement of registered firms to report OBAs, given that the conflicts of interest typically associated with OBAs are unlikely to exist in such contexts. In addition, we propose that where the CCO and ultimate designated person (**UDP**) of a registered firm has conducted a detailed review and determined that a conflict of interest does not exist with an OBA, that OBA should not require reporting. The CCO and UDP should assess the potential conflicts of interests associated

with an OBA, establish appropriate criteria for the reporting of OBAs and conduct ongoing monitoring to ensure no changes to the OBAs have occurred.

We submit that it is unnecessarily burdensome on registrants to require updates for OBAs to be made within 10 days of the commencement of or a change to an OBA and for the OSC to impose late fees of $100 per business day for reporting changes to OBAs made after the 10-day period. We recommend that the OSC work with the other CSA members to lengthen the deadline for such filings and for the OSC to change the late fees for the late filing of OBA updates to have a reasonable cap.

Form 33-109F5 *Change of Registration Information* (**Form 33-109F5**) and Form 33-109F6 *Firm Registration* (**Form 33-109F6**)

Section 3.1 of NI 33-109 states that subject to certain exceptions, a registered firm must notify the regulator of a change to any information previously submitted in Form 33-109F6 within 30 days for a change in relation to part 3 (Business history and structure) of Form 33-109F6 and within 10 days for a change in relation to any other part of Form 33-109F6, and such notice of change must be made by submitting a completed Form 33-109F5. In addition to submitting Form 33-109F5, if the changes being submitted are with respect to Form 33-109F6, it is a requirement to attach a blackline of the amended sections of Form 33-109F6. We submit that the latter submission of a blacklined Form 33-109F6 is redundant and should not be required.

Form 45-106F1 *Report of Exempt Distribution* (**Form 45-106F1**)

We submit that the OSC (in consultation with the other CSA members) reconsider the current requirement for investment funds to have to file Form 45-106F1 through three separate filing systems: the OSC portal in Ontario, BCSC e-services in British Columbia and SEDAR in the remaining provinces and territories. Many of our members are small firms that rely heavily on external legal counsel or other service providers to make such filings, and having to file through three different systems significantly increases costs for our members. This burden was recently highlighted in CSA Staff Notice 45-325 *Filing Requirement and Fee Payable for Exempt Distributions involving Fully Managed Accounts*, which sets out the three different approaches based on jurisdiction taken to the filing and fee payment requirements for Form 45-106F1s for exempt distributions involving fully managed accounts (**CSASN 45-325**). CSASN 45-325 expressly acknowledges that while Form 45-106F1 has been harmonized, the requirement to file and pay filing fees for Form 45-106F1 continues to be governed by the securities legislation of each CSA jurisdiction. In addition, in a jurisdiction where it is required, significant additional resources are required to gather information on beneficial owners located in the jurisdiction, particularly where the managed accounts are with a third party portfolio manager.

Risk Assessment Questionnaire (**RAQ**), Prospectus-Exempt Fund Form (**Fund Form**) and Other Questionnaires and Surveys

Every two years, the OSC issues the RAQ, a mandatory questionnaire that gathers comprehensive information about registrants' business operations. Investment fund managers who manage non-prospectus qualified funds also receive a Fund Form to complete and return to the OSC. To assist registrants by making the RAQ and Fund Form processes more efficient and less time consuming, the OSC should also provide an electronically accessible version of the previously completed RAQ or Fund Form, as applicable, as the baseline for registrants, so that all that is required is an update where any information has changed.

We submit that it would be less burdensome for registrants and more reasonable for the OSC to issue the RAQ and Fund Form every three years rather than every two years, given the other methods by which the OSC does and can obtain information respecting registrant risks.

We further submit that the OSC should better coordinate the circulation of questionnaires and surveys more generally to registrants with other CSA members so that market participants are not inundated with multiple questionnaires and surveys in short periods of time. This is costly for firms in terms of time and resources spent responding while also trying to conduct business.

Monthly Suppression of Terrorism and Canadian Sanctions Reporting

Alternative asset managers are typically considered to be securities dealers under the *Proceeds of Crime, Money Laundering and Terrorist Financing Act* (**PCMLTFA**) and as such have a myriad of regulatory obligations under that legislation. Included in those regulatory obligations is a requirement to implement ongoing monitoring procedures for high risk clients and submit suspicious transactions reports, large transaction reports and terrorist property reports as applicable. Canada's legislative measures against terrorist financing and against financial dealings with certain sanctioned individuals and entities are contained in various Canadian statutes and regulations that under the PCMLTFA registered firms are required to adhere to. Entities that are subject to federal provisions are required to determine on a continuing basis whether they are in possession or control of property owned or controlled by or on behalf of an entity or person listed or designated in a particular federal provision and if so, submit the appropriate reports to regulatory authorities.

We submit that the Monthly Suppression of Terrorism and Canadian Sanctions Reporting reports submitted to a firm's principal regulator are redundant in light of a registrants obligations under the PCMLTFA.

Personal Information Forms (**PIFs**)

We submit that the status quo of filing PIFs via various platforms and processes is duplicative and burdensome. We recommend that the OSC and other CSA members examine the feasibility of a streamlined, centralized PIF database to ease the filing burden.

4. Are there particular filings with the OSC that are unnecessary or unduly burdensome?

Codify Standard Exemptive Relief and Approvals

We submit that the OSC could reduce unnecessary filings by codifying certain exemptive relief and approvals that are routinely granted. A few examples of standard relief and approvals granted that Staff should consider codifying are:

- from section 13.5 of NI 31-103. Where an investment fund managed by a registrant transfers assets to a newly created investment fund as part of a restructuring and where there is no change in the beneficial ownership of the investment assets, registrants should not have to pay legal fees and regulatory filing fees to obtain exemptive relief. The relief in such situation is only required because the transaction is technically offside the rule, but does not raise any of the concerns that gave rise to the rule;

- from section 111 of the Act for pooled funds from the fund-on-fund investment restrictions; and

- under section 213(3)(b) of the *Loan and Trust Corporations Act* for approval from the OSC for a manager to act as trustee of a mutual fund trust established and managed by the manager.

Approval of Acquisitions

The approval requirements under section 11.9 of NI 31-103 have been broadly interpreted by Staff and often seeking these approvals can cause undue delay in an M&A transaction. The current time for approval varies greatly and does not seem to be based on any matters related to the specifics of the transaction. This uncertainty adds risk to closings, which is not warranted given that the regulators have the ability to impose requirements on these entities, as registrants, post-closing. There is also often significant and unnecessary overlap with approvals of other SROs. We submit that in circumstances of a registrant purchasing another registrant, entities which are both regulated by and will continue to be regulated by the securities regulatory authorities of the applicable jurisdiction, the technical objection notice should not be available. The 30 days' notice would be appropriate in the circumstances and would help facilitate the capital markets activity in the sector. A standard form notice, updating with the questions often posed by Staff, would also provide a more streamlined process.

Registration of Individuals

We submit that the OSC could make the process of registering individuals less burdensome for firms. It is currently very time consuming for a firm to register an employee with the OSC, particularly as an advising representative. Staff should have a set of clear criteria and timelines for registering individuals as advising or dealing representatives. Our members have noticed a significant variation in the time and level of detail of supporting information required to register an individual, particularly as an advising representative. Staff should also recognize varied relevant investment management experience. NI 31-103 does not require that "relevant investment management experience" be obtained with respect to a cross section of sectors or types of securities and therefore Staff should not impose such criteria. We encourage the OSC to allow for easier registration of associate advising representatives who provide client relationship services and may not meet the current proficiency requirements of an associate advising representative.

5. Is there information that the OSC provides to market participants that could be provided more efficiently?

We submit that improving the accessibility and currency of the OSC's online resources and website would enhance market participants' ability to monitor updates to regulatory requirements more efficiently. We commend the OSC for making available to registrants a tremendous amount of information and guidance on the OSC's website. However, market participants would further benefit from improvements to the website and online resources, which could be made more user-friendly in terms of searchability. For example, we would recommend that national instruments be shown in updated, consolidated form at the time final amendments are issued, as they are on the websites of the British Columbia Securities Commission and the Alberta Securities Commission. Updates should also include a blackline to the original rule and a clean consolidated rule. We would also recommend that the OSC consult with the Canadian Securities Administrators (**CSA**) on improvements to the System for Electronic Document Analysis and Retrieval (**SEDAR**), in particular improved searchability.

We recommend that the OSC website include a topical guide for grouping exemptive relief similar to what is provided for the Investment Funds Practitioner, as well as for other types of OSC website searches. Having an exemptive relief guide would be an easier way to identify the most recent precedents that the OSC will expect filers to reference in their applications and give filers certainty on the precedents the OSC is likely to rely on.

We submit that the OSC (and other CSA members) need to use clearer, more consistent plain language in communicating with market participants. The rules under securities laws would also benefit from being revisited to reflect plain language principles. Over the years and various amendment cycles, the rules have become complicated, wordy and stylistically inconsistent. Revising the rules to reflect plain language principles would provide greater certainty on rule interpretation to market participants.

We further submit that avoiding legislating by way of audit and instead codifying requirements under securities laws would be a more efficient method of providing information to market participants respecting the OSC's expectations. Please see above under the heading "Staff Guidance versus Regulatory Requirements".

Codifying certain exemptive relief and approvals routinely granted by the OSC would also aid in efficiency efforts. Please see above under the heading "Codify Standard Exemptive Relief and Approvals".

In addition, we submit that there is information that market participants provide *to* the OSC that could be dealt with by the OSC more efficiently. Please see above under the headings "Improve Information Sharing Between Branches" and "Justification for Information Requests".

B. Rule changes

6. Are there requirements under OSC rules that are inconsistent with the rules of other jurisdictions and that could be harmonized?

We submit that the treatment of OBAs is inconsistent and could be harmonized nationally. Please see above under the heading "Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* (**Form 33-109F4**) – Item 10 – updates for outside business activities (**OBAs**)".

We further submit that joining the Passport System and coordinating the filing of Form 45-106F1s with the other CSA members would both be welcome efforts in harmonization. Please see above under the headings "Join the Passport System" and "Form 45-106F1 *Report of Exempt Distribution* (**Form 45-106F1**)".

7. Are there specific requirements that no longer serve a valid purpose?

We submit that the following disclosure requirements, filing obligations or exemptions should be eliminated or modified as described below in order to achieve burden reduction. We encourage the OSC to work with the other CSA members to publish proposals to address the suggestions provided below.

Eliminate the Requirement to Prepare and File the Interim Management Report of Fund Performance (**MRFP**)

We recommend that the requirement for investment funds that are reporting issuers to prepare and

deliver an interim MRFP pursuant to Parts 4 and 5 of National Instrument 81-106 *Investment Fund Continuous Disclosure* be repealed (**NI 81-106**). Our members' experience suggests that considerable effort is spent in creating the interim MRFP and very few investors actually review the document. Unlike corporate issuers, reporting issuer investment funds offer long term investment opportunities and do not engage in business activities that demand frequent investor reporting. Given that any material changes relating to a publicly offered investment fund would have to be announced under the material change reporting regime in NI 81-106, we submit that a single annual MRFP, coupled with semi-annual (and annual) financial statements and quarterly portfolio disclosure would provide sufficient information for investors.

Eliminate the Financial Disclosure Requirements under Part 3 of NI 81-106

We submit that the specific disclosures required under Part 3 of NI 81-106 are unnecessary in light of the requirement to prepare financial statements in accordance with International Financial Reporting Standards (**IFRS**). It is unduly burdensome and costly in terms of audit fees and complexity of preparation to require the specific disclosures that are not otherwise required under IFRS. For example, we recommend eliminating the requirement to list each portfolio investment in the statement of investment portfolio under section 3.5 of NI 81-106, given that investment portfolios can and do change frequently, such a schedule may present immaterial (while obscuring material) financial information and adds to firms' audit costs disproportionately relative to the benefits obtained by providing such information to investors. As a further example, we recommend eliminating the requirement to provide separate financial disclosure for revenues derived from securities lending activities and income from derivatives investments.

Eliminate the Requirement to Prepare and File the Annual Information Form (**AIF**)

We submit that the requirement to prepare an initial stand-alone AIF which is then updated annually for reporting issuer investment funds pursuant to Part 2 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* should be eliminated. There is considerable overlap between the information found in an AIF and the information found in the simplified prospectus (**SP**). The duplication of information between the two documents increases costs for investment funds and can also lead to investor confusion. We submit that the AIF requirement for investment funds that are reporting issuers should be repealed and any material information currently required in the AIF should be added as required disclosure to the SP.

We further submit that the requirement to file an AIF pursuant to Part 9 of National Instrument 81-102 *Investment Funds* (**NI 81-102**) should also be eliminated on the basis that the investment funds subject to this rule are not in continuous distribution and only need to update existing investors with material changes so that investors can decide whether to remain invested in the fund. Such information can be provided to investors by way of material change report.

Extend Simplified Prospectus Lapse Date

Under section 62 of the Act, the lapse date of an SP is currently set at 12 months. We submit that an SP should lapse 25 months from the date of issuance of the receipt, consistent with the regime for base shelf prospectuses (see section 2.7 of National Instrument 44-102 *Shelf Distributions*). In lieu of the annual SP renewal, the Fund Facts should be renewed annually. Since the Fund Facts document replaced the SP as the delivery document to purchasers of mutual funds that are reporting issuers, there is less reliance among investors on the SP. Further, the bulk of the information contained in the SP does not require annual updating, especially given that investors will be provided with updated

Fund Facts documents. Any changes to the investment fund that are significant will trigger an amendment to the SP under the material change report regime in Part 11 of NI 81-106.

Remove the 90-Day Deadline Between Receipt for Preliminary SP and Final SP Filings

Under subsection 2.1(2) of NI 81-101, a mutual fund is required to file a final SP within 90 days of receiving the receipt for the preliminary SP. We submit that this 90-day deadline is often too restrictive and does not address the overarching policy rationale for the time limit. In addition, the cost of applying for exemptive relief to extend the deadline often exceeds the cost to file the original preliminary SP. Investment fund managers launching new products are often delayed by various negotiations with service provides ahead of filing the final SP. Unlike corporate issuers, investment fund issuers do not typically market the fund using the preliminary SP. Further, given that the preliminary SP does not contain any material financial information that would be considered stale after 90 days, we submit that there is no investor protection rationale for imposing the 90-day deadline.

Eliminate the SEDAR Form 6 Requirement

Section 4.3(3) of National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* requires a manually signed SEDAR Form 6 to be completed prior to the electronic filing of certain disclosure documents that contain a certificate signed by a person or company. An original of the executed SEDAR Form 6 is also required to be delivered to the CSA Service Desk within 3 days after filing. We submit that this requirement is outdated and that it should be eliminated in light of the fact that issuers should ultimately be responsible for verifying the authenticity of the electronic signatures that are submitted with filings where required.

Modify the International Dealer Exemption

Subsection 8.18(2) of NI 31-103 provides that the dealer registration requirement does not apply in respect of certain trades in securities, subject to the requirements under subsection 8.18(3) and (4). One requirement is that the "international dealer" is registered under the securities legislation of its foreign jurisdiction to act as dealer. We submit that international dealers that are exempt from registration under the securities legislation of its foreign jurisdiction should also be permitted to rely on this exemption. For example, SEC registered advisers are able to distribute their own products pursuant to an exemption in their local jurisdiction and, as such, should be able to avail themselves of the international dealer exemption. This exemption should operate in parallel to the international adviser exemption, which is available to an international firm that is registered or exempt from registration in its foreign jurisdiction as an adviser. We note that the investor protection element is probably not relevant given that the international dealer exemption is available only where the Canadian purchaser is a permitted client. In addition, we further submit that this exemption should be automatic for international affiliates of Canadian banks and financial institutions given the routine nature of business interactions between such entities.

C. General Comments

We submit that in the context of alternative investments, there are several improvements that could be made to the regulatory framework in order to reduce operational burden and costs for market participants, without sacrificing strong investor protections and adequate access to disclosure both

prior to and during the investing experience. We would appreciate the OSC's consideration of the general comments and issues specific to the alternative investments industry outlined below in its development of proposals to reduce regulatory burden.

The Costs of Compliance

A survey of our members on the costs of internal and external compliance yielded the following information:

- Responding investment fund managers ranged from less than $25M in assets under management (**AUM**) to $20B+ in AUM, having been in existence from 1-10+ years, with 5-100+ employees.

- The average responding investment fund manager spends $100,000-$500,000 per year on internal and external compliance expenditures. This represents approximately 5-25% of total revenues.

- Total hours spent per month on compliance activities range from 10-101+ hours per month. The highest cited costs are on internal compliance staff, external legal & compliance staff, technology (e.g. cybersecurity) and third-party consultants.

- Training on new legislation is often paid for by fund companies to their legal team, which increases the cost of compliance. Firms use their memberships to third party associations for guidance on interpreting legislation.

Revisiting the Proficiency Requirements for Distributing Alternative Mutual Funds

The securities of alternative mutual funds must generally be distributed through dealers that are members of the Investment Industry Regulatory Organization of Canada (**IIROC**). For such dealers, the proficiency requirements are addressed in subsection 3.4(1) of NI 31-103, which states that "[a]n individual must not perform an activity that requires registration unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently…".

Mutual fund dealers that are members of the Mutual Fund Dealers Association (**MFDA**) are generally prohibited from distributing securities of alternative mutual funds unless they meet the proficiency requirements in National Instrument 81-104 *Alternative Mutual Funds* (**NI 81-104**). These requirements provide that a mutual fund restricted individual must have one of the following qualifications: (i) at least a passing grade for the Canadian Securities Course; (ii) at least a passing grade for the Derivatives Fundamentals Course; (iii) successfully completed the Chartered Financial Analyst Program; or (iv) obtained any applicable proficiency standard mandated by an SRO.

We submit that imminent change is necessary to the proficiency requirements to allow all MFDA dealers to distribute alternative mutual funds. Retail clients of mutual fund dealers who do not meet the proficiency requirements are unable to access the diversification, risk-reduction and non-correlated returns that alternative strategies can provide. There is no clear rationale for a different set of proficiency standards to apply to IIROC dealers and MFDA dealers and for a distinct proficiency regime for the distribution of conventional mutual funds and alternative mutual funds. We encourage the OSC to work with the MFDA to align proficiency requirements in a manner that allows MFDA dealers to distribute alternative mutual funds.

Retail Distribution Challenges

It is increasingly difficult for boutique fund manufacturers and emerging fund managers to distribute alternative investment products to retail investment advisors at broker dealer firms.

Common issues include (i) the overlay of unjustly high internal risk ratings at the dealer, making it hard for advisors to allocate; (ii) a reduced number of fund companies and new funds in general being approved for distribution; (iii) the promotion of internal recommendation list fund products; and (iii) a lack of interest by advisors to have their clients fill out additional subscription document & risk acknowledgement paperwork.

We recommend removing the risk acknowledgement form requirement for accredited investors and request further guidance from the OSC and other CSA members on fair risk rating methodology.

Where there may not be legislative initiatives that solve all of these issues, it is important that the OSC is aware of the difficult sales environment small investment management businesses are placed in. These distribution challenges materially affect a fund manager's ability to access pools of capital in Canada and directly impact their ability to grow and scale.

Regulatory Obligations and the Distribution of Private Funds Versus Retail Funds

It is our view that the registration of alternative asset managers, the distribution of private funds and the ongoing obligations of registrants managing and distributing private funds is currently reviewed and considered by regulators through the same lens as retail funds.

There are a variety of differences between private funds and retail funds. For example, private funds are designed for high net worth, ultra-high net worth or institutional investors (i.e. those meeting the definition of accredited investor or permitted client under securities laws). Private funds attempt to offer non-correlated returns, implement bespoke investment strategies and may distribute non-Canadian investment products to non-Canadian investors in foreign jurisdictions (subject to local jurisdictional regulatory requirements). We further note that the functions of a retail fund manager, adviser or dealer are fundamentally different than those of a private fund manager/adviser/dealer.

Oftentimes however, during the course of regulatory reviews or in the provision of guidance, alternative asset managers and private funds are looked at through the same lens as retail asset managers and retail investment funds (for example, with respect to policies and procedures, account opening documentation, and frequency of KYC updates and suitability reviews for registrants who advise private equity funds). We submit that creates an unnecessary burden on alternative asset managers to meet "form" requirements that the regulators are familiar with in the retail products context rather than substantively meeting their regulatory obligations within the alternative investments context.

We recommend the OSC consider reviewing the obligations of alternative asset managers of private funds, similar to the approach taken by the Securities and Exchange Commission's Office of Compliance Inspections and Examinations (**OCIE**) division in the United States with respect to oversight. OCIE's private fund unit takes a targeted approach for private fund exams and have specialized examiners, covering areas ranging from financial markets to derivatives, and coordinating among examiners nationally. This setup allows the regulators to better understand private funds and focus on issues specific to this area of the investment management industry. Having focused oversight on private funds to determine specific issues faced by those types of asset managers would alleviate

some of the regulatory burden that is placed on these managers.

Many of our members and other non-member alternative asset managers are also registered as exempt market dealers and advise foreign hedge funds or private equity funds. These managers distribute proprietary private funds to foreign investors in accordance with applicable local regulatory requirements such as meeting private fund exemptions, broker-dealer registration exemptions and qualified purchaser requirements in the United States. For those registered in Canada as exempt market dealers, distributing securities of foreign domiciled funds to foreign investors, where there is no nexus to Canada other than the registrants' physical presence in Canada and whose investors are qualified purchasers (retail or institutional), it is an undue burden to apply "Canadianized" dealer obligations (such as prescribed account statement format, performance reporting, certain disclosures, having access to a Canadian dispute resolution service provider, etc.). Often times, non-Canadian investors do not want such information at all or in the format provided, as this information does not meet the needs of the foreign investor. Yet the obligation to provide this information becomes a "tick-the-box" exercise more for the regulators during a regulatory review and is not value add for the investor, adding an unnecessary cost to the registrant in terms of time, money and firm resources.

We appreciate the opportunity to provide the OSC with our views on this initiative. 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

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