



Alternative Investment Management Association

The Managing Director
Cayman Islands Monetary Authority
P.O. Box 10052
80e Shedden Road
Elizabethan Square
Grand Cayman KY1-1001
Cayman Islands

Submitted by email to: t.dequintal@cimoney.com.ky and Consultation@cimoney.com.ky

18 March 2013

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') on corporate governance.

As CIMA acknowledges, international efforts to improve corporate governance standards have gathered pace over the last two 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 must 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 the Consultation Paper as a first step in the review of the jurisdiction's corporate governance regulatory standards and agree that corporate governance standards and greater transparency for investors are critical for stabilising financial markets and improving investor confidence. In relation to the particular issues raised in the Consultation Paper, AIMA conducted member consultation meetings in Cayman and the UK which were attended by over 30 members including representatives of the investment management, legal, director services, fiduciary services, insolvency and audit professions. Accordingly, we believe that the views expressed and consensus reached is representative of the industry at large. As such, AIMA considers that:

- the proposed Statement of Guidance (the 'SOG') imposes upon all Cayman Islands entities standards that are more applicable, as currently drafted, to a specific class of entity, such as banks rather than providing generic core guidance. As such, we believe that supplemental sector specific guidance applicable, in particular, to the mutual funds industry would be helpful, although we would argue that the implementation of a rule or code setting out compulsory standards for the industry would not be a proportionate measure given the nature of the participants and service providers in the Cayman Islands. AIMA considers that a mutual funds sector specific SOG should be limited to generic core guidance which is applicable to all Cayman Islands registered or administered mutual funds to ensure that it is appropriate and relevant;

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 the list of international developments recommending or requiring greater probity, transparency and accountability in the financial services sector on page 1-2 of CIMA's letter dated 14 January 2013 titled 'Corporate Governance Private Sector Consultation Paper'.

The Alternative Investment Management Association Limited
167 Fleet Street, London, EC4A 2EA

Tel: +44 (0)20 7822 8380 Fax: +44 (0)20 7822 8381 E-mail: info@aima.org Internet: <http://www.aima.org>



- the licensing or regulating those Cayman based businesses that provide director services to the mutual fund industry should be reflected in sector specific legislation rather than seeking to apply the same standards to all Cayman companies through the Companies Management Law. As such, AIMA would prefer to see specific provisions included within the Mutual Funds Law or discreet legislation applicable only to mutual funds to ensure direct relevance and practicality of the licensing terms;
- the application of core international principles relating to corporate governance coupled with a disclosure based regime is welcome, but we question the utility of a public database. Much of the information proposed to be contained in the database is already readily available to investors via existing offering materials or standard due diligence processes. Further while CIMA will have information on the identity of most (if relying on current reporting requirements) or all directors of Cayman Islands companies (if there is a registration requirement), any data it would seek to collect from directors in respect of their non-Cayman Islands directorships would necessarily have to be self-certified and keeping such information up to date may be impracticable. A database showing only an individual's Cayman Islands directorships may be of limited utility to investors seeking information on the overall commitments a director may have and trying to judge a director's capacity to devote sufficient time and attention to being the director of any given company. Furthermore, as CIMA acknowledge, running a public database would be costly and we do not consider that it is necessarily the best way of enhancing the due diligence process or the reputation of the Cayman Islands as a financial services industry. AIMA has concerns with regards to the integrity and accuracy of data that may be contained in a public database and the potential increased risk of fraud affecting fund directors and funds. If data does not remain accurate and current at all times, a database may be more harmful than helpful. A public searchable database could present a material risk to CIMA in terms of data accuracy and integrity and use/misuse of the information.
- AIMA considers that mandating improved investor disclosure would be a more appropriate way of assuring that appropriate information is provided to investors. For example, providing investors with additional information about the nature and scope of a director's other professional and business obligations, including, but not limited to, the number of other directorships held, may be of far more use to investors than a public database. Alternatively, rather than establishing a public database, a CIMA database could be established which could be used for verification or authentication at CIMA's instance i.e., each fund could consent to CIMA issuing statements of verification or authenticity to third parties confirming the data held as an extract;
- the registration of directors may be a helpful step toward improving corporate governance, however, any such requirements should not be made overly burdensome in terms of process, costs, content or timing such that directors from outside the Cayman Islands are discouraged from participating as directors to Cayman Islands companies. Nor should any registration requirements directly or indirectly require that directors are resident in the Cayman Islands. We agree that the registration of directors would improve CIMA's industry data and should improve efficiencies when supervising corporate governance standards. However, CIMA should make it clear that the registration of directors does not equate to regulation of the directors. CIMA should not seek to impose regulation extraterritorially. It should be made clear to market participants that any register of directors does not equate to the directors being regulated by CIMA, in order to avoid any assumptions to the contrary;
- the CIMA licensing regime should not apply to directors based outside of the Cayman Islands. In particular it is not practical to apply this regime across all industry sectors (e.g. SPVs, holding companies, CLO vehicles etc.). In the event that CIMA choose to pursue the licensing of directors, CIMA should consider excluding directors who are also employees of the manager (i.e. "non-professional" directors who might receive limited remuneration or benefits for taking on these additional responsibilities). CIMA approval should not be required prior to any licensed director (or approved director from a licensed director services provider) being appointed as a director; and it would not be appropriate to set a limit on the number of directorships that an individual



director can hold as the nature and scope of a director's activities in respect of specific companies will vary. For example, a director may be a member of the boards of connected entities where the majority of the decisions may apply to all the interconnected entities. A director of this kind may be able to adequately apply his/her mind to a large number of entities due to their interconnected nature. On the other hand, a fund director may sit on the board of an international conglomerate which may require a large amount of time and result in the director not being able to provide adequate attention to more than a few fund directorships s/he may hold. By the same token, a disproportionate number of small manager relationships will also occupy a great deal of a director's time. This is because small managers lack infrastructure and so the directors will need to be far more involved in the business of the entity than may be the case for directors involved in larger managers. As CIMA acknowledge, the key question is whether a person is able to adequately apply his/her mind to all the directorships s/he holds. Market discipline on this matter could be achieved in a more effective manner through increased disclosure of directorships (on an internal company basis rather than publically) and/or peer (fellow board members) or investor assessments. Disclosure of the nature and scope of directorships could also be given to investors either at the time of investment and/or at any time following investment upon request.

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

Yours sincerely,

A handwritten signature in blue ink, appearing to read "J. Król", is written over a light blue horizontal line.

Jiří Król
Director of Government & Regulatory Affairs