

October 23, 2020

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

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The Secretary, Ontario Securities Commission  
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Me Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs, Autorité des marchés financiers  
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Dear Sirs/Mesdames:

**RE: CSA Consultation Paper 25-402 – Consultation on the Self-Regulatory Organization Framework**

**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 2,000 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.

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

## Comments

We are writing in response to **CSA Consultation Paper 25-402 – Consultation on the Self-Regulatory Organization (SRO) Framework**.

Overall, AIMA Canada supports the objective of reviewing the SRO framework and commends the Canadian Securities Administrators (CSA) on this initiative.

Further to [our response](#) on a similar topic in the recent Ontario Capital Markets Modernization Consultation, AIMA is supportive of a single SRO, responsible for the regulation of investment dealers and mutual fund dealers.

The governance and oversight of Canada's SROs are national issues and require a coordinated national solution. The CSA has demonstrated its capacity to operate as an effective quasi-national regulator over the last several years making significant strides in harmonizing securities legislation across all Canadian jurisdictions. Until such time as a viable national securities regulatory agency is in place, the CSA remains the best option to effect meaningful change in our capital markets. Ontario's capital markets are an integral element of Canada's economy and the OSC continues to play a central leadership role within the CSA. A unilateral amendment of the Recognition Orders could damage this leadership position.

We recommend that the OSC be directed to work with other CSA members to reform the governance and oversight of Canada's SROs, and work towards a single SRO. The end result of a single SRO should bring lower costs, increased efficiencies, increased transparency and increased access to Canadian investors. This single SRO should have the appropriate technology, systems and infrastructure to handle all types of products, advisors and clients across Canada, in both small communities and large cities.

We support McMillan LLP's suggested SRO governance reforms, as highlighted in their comment letter for the Ontario Capital Markets Modernization Consultation. This would be implemented by the CSA including:

- (i) consolidation of the operation and governance of the SROs within a single entity (“**Newco**”) (discussed in further detail in our comments on Proposal 4 below);
- (ii) determination of the optimal size of the Board of Newco;
- (iii) a mechanism for the appointment of directors by CSA members and a resolution mechanism for the resolution of any disagreements concerning such appointments amongst CSA members;
- (iv) a requirement that all directors of Newco be approved by the CSA;
- (v) further development of the required criteria for a director of an SRO to be considered to be “independent”, including a required “cooling off” period if a candidate has been previously employed by an SRO member.
- (vi) a requirement that at least two-thirds of the Board of Newco be comprised of independent directors (including representatives of investor protection advocates);
- (vii) a requirement that the Chair of the Board of Newco be independent;
- (viii) the introduction of maximum term limits for directors; and a requirement that the Board approve the compensation of principal SRO executives in accordance with annual public interest and policy objectives developed and published by the CSA.

The CSA might consider establishing a standing committee responsible for the governance and oversight of SRO activities in Canada. We support McMillan LLP’s suggestion that the SRO oversight committee should be comprised of permanent members from Ontario, Québec, Alberta and British Columbia, complemented by three rotating members (with three-year terms) from the remaining CSA jurisdictions. The SRO oversight committee would be empowered to establish sub-committees or working groups to address specific issues, as required, including ad hoc sub-committees or working groups headed by specific CSA members for matters having a specific local connection or importance.

The SRO oversight committee’s responsibilities should include:

- (i) development and publication of a three-year statement of policy and public interest objectives for Newco including long term recommendations of areas for the reduction of the regulatory burden and compliance costs of registrants;
- (ii) development and publication of an annual statement of priorities for Newco in connection with the implementation of the three-year plan, including annual performance objectives for SRO executives upon which their compensation will be based;
- (iii) approval of any significant new regulations or guidance developed by Newco or any material amendments to such regulations or guidance;
- (iv) regular, as well as risk-based, oversight powers regarding the operations of Newco; and

- (v) powers to review and resolve any complaints received from SRO members relating to the operation of Newco.

We do not support the creation of a separate ombudsperson for the review and resolution of SRO member complaints as we are of the view that this would only create an additional layer of regulatory oversight and costs. We believe that this role might be performed more effectively by an SRO Oversight Committee.

Furthermore, for the reasons set out below, we believe that the Newco should be primarily a prudential regulatory authority and do not support the extension of the scope of the Newco's regulatory authority to include portfolio managers, exempt market dealers or scholarship plan dealers.

As noted by McMillan LLP, as a result of the manner in which market participants have traditionally been regulated, significant knowledge and expertise has developed within:

- (i) IIROC and the MDFA in relation to the oversight and regulation of investment dealers and mutual fund dealers (respectively); and
- (ii) the OSC and individual members of the CSA in relation to the registration, oversight and regulation of portfolio managers, exempt market dealers and scholarship plan dealers.

Consolidation of the regulatory oversight for all of these categories of registrants in a single SRO entity would require a significant transfer of personnel with such knowledge and experience from CSA members to Newco and would likely result in jurisdictional disputes where registrant activities relate to a specific province or territory or multiple provinces or territories.

Many portfolio managers are also registered as investment fund managers in order to manage the investment funds that they advise and offer to investors in either a publicly offered investment fund or on a private placement basis (in which case they are also typically registered as an exempt market dealer in order to facilitate direct investments in the fund).

The consultation does not appear to contemplate that investment fund managers will be regulated by Newco. This would result in many portfolio managers being subject to regulation by both Newco and the applicable CSA member (or members) resulting in an additional, unneeded regulatory burden and increased costs for these registrants.

We agree with McMillan LLP's recommendation that:

- (i) Newco be responsible for the prudential regulation of investment dealers, mutual fund dealers and national market surveillance matters; and
- (ii) CSA members be responsible for the statutory registration function and regulatory oversight of all categories of registration (investment dealers, mutual fund dealers, portfolio managers, investment fund managers, exempt market dealers and scholarship plan dealers).

The prudential regulation authority of Newco would relate to matters including:

- (i) minimum capital requirements,

(ii) liquidity requirements and

(iii) identification and control of risks (at both a macro and micro level).

A single SRO would remain subject to the oversight of the CSA in the manner we have proposed above.

A final solution to the SRO model in Canada should bring increased efficiencies (regulatory, operating, technological), increased consistency, increased transparency, reduced costs and an enhanced member experience, while maintaining or enhancing integrity, oversight and investor protection. It should also result in the fair access to advice and investment products for all Canadians in markets small and large.

We appreciate the opportunity to provide the CSA 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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