



May 29, 2008

Ministry of Finance
95 Grosvenor Street, 4th Floor
Toronto ON M7A 1Z1

Attention: Colin Nickerson
Senior Manager, Industrial and Financial Policy Branch

Dear Sirs/Mesdames:

Re: AIMA Canada's Comments on the Ontario Ministry of Finance's Proposed Amendments (the "Proposed Amendments") to the *Securities Act* (Ontario) (the "Act")

This letter is being written on behalf of the Canadian chapter ("AIMA Canada") of the Alternative Investment Management Association ("AIMA") and its members to provide our comments to you on the Proposed Amendments.

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 hedge fund, futures fund 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 1,280 corporate members, throughout 49 countries, including many leading investment managers, professional advisers and institutional investors. AIMA's Canadian chapter, established in 2003, now has over 80 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 be the pre-eminent voice of the industry to the wider financial community, institutional investors, the media, regulators, governments and other policy makers and to offer a centralized source of information on the industry's activities and influence, and to secure its place in the investment management community.

For more information about AIMA Canada and AIMA, please visit our web sites at www.aima-canada.org and www.aima.org.

This comment letter has been prepared by a working group of the members of AIMA Canada, comprised of managers of hedge funds, fund of funds and accountancy and law firms with practices focused on the alternative investments sector.

We wish to thank the Ministry of Finance for inviting capital market participants to comment on the Proposed Amendments and appreciate the opportunity to express our views.

Harmonization

We would like to express our support of the initiative of the Canadian Securities Administrators, contained in proposed National Instrument 31-103 *Registration Requirements* (“**NI 31-103**”), to harmonize, streamline and modernize the securities registration regime across Canada, to provide protection to investors from unfair, improper or fraudulent practices, and to thereby enhance capital market integrity. We feel that this initiative will assist capital market participants in conducting business across Canada by generally reducing their regulatory burden and associated costs while ensuring that they are subject to a uniform set of sound regulatory principles and requirements.

It is our view that to achieve its objectives, NI 31-103 must ensure a level playing field among all capital market participants in Canada (both domestic and foreign) and assist participants in the Canadian capital markets in playing an active and competitive role in the global investment community. The Canadian capital markets are a very small portion of the global market, and, in our view, need to maintain a regulatory system that keeps them internationally competitive.

We have urged the CSA to implement NI 31-103 in each jurisdiction to the greatest extent possible in the same form, and, more importantly, to ensure that staff in each jurisdiction administer and interpret NI 31-103 in a uniform and consistent fashion. Although we understand that certain carve-outs have been maintained in NI 31-103 because of historical practices and different approaches to regulation and enforcement, as well as concerns about the implications for local markets, we submit that the adoption of NI 31-103 as a national instrument is an opportunity for the CSA to move forward with a harmonized regime, without distinction between jurisdictions.

We note with substantial concern that many of the provisions contained in NI 31-103 are proposed to be moved to the Act for Ontario. The value of NI 31-103 as an instrument which will harmonize and streamline the securities registration regime in Canada is significantly reduced by removing so many provisions from NI 31-103 and inserting them in the Act. The consequence will be a fragmented securities regulatory regime substantially similar to the status quo which does not in any way reduce regulatory burden and cost to market participants. If the balance of the provincial and territorial legislatures take the same approach as Ontario and remove provisions from NI 31-103 to their respective securities acts, it will be almost impossible to read and comprehend NI 31-103. To the extent sections of NI 31-103 which are not applicable in Ontario are amended without concurrent and identical amendments to the Act, the securities regulatory regime in Ontario will become even more fragmented from the rest of Canada.

Moreover, the considerable explanatory text that is contained in the companion policy to NI 31-103, and which has been extensively reviewed and commented upon by many capital market participants, will not be available to assist in market participants’ understanding of those provisions of the Proposed Amendments which have been adopted, in a piecemeal manner, from NI 31-103.

If provisions are removed from NI 31-103 and inserted in the Act, we feel that it is essential that such provisions of the Act contain language which is identical to the language used in NI 31-103 or National Instrument 45-106, as the case may be. We have noted a number of inconsistencies in drafting between the Proposed Amendments on the one hand and NI 31-103 and proposed NI 45-106 Prospectus and registration Exemptions.

If the language in the Proposed Amendments and NI 31-103 differs, market participants registered in jurisdictions in addition to Ontario will be required consider how and if each difference in language can be reconciled. Where the language cannot be reconciled, the goal of harmonization will not be achieved and market participants will have to comply with two differing regulatory regimes. In considering the legislative intent of the Proposed Amendments and NI 31-103, it would not be unreasonable to conclude that because the authors selected different words, their intention was to convey a different meaning. The consequence of differing language in the Proposed Amendments and NI 31-103 will be substantial uncertainty, a lack of transparency and increased cost and regulatory burden to market participants.

We urge the CSA and the Ministry of Finance to take all necessary steps to ensure that identical language is employed in NI 31-103 and the Act. To the extent further changes are made to NI 31-103 or NI 45-106 prior to enactment, these changes too should be duplicated identically in the Proposed Amendments.

Statutory Duty of Care and Standard of Care

We recognize that section 32(3) of the Proposed Amendments is currently set out in Ontario Securities Commission Rule 31-505 *Conditions of Registration*. However, in our view, this obligation creates a fiduciary duty and not a statutory duty of care, per se. The Ministry of Finance's note to readers following section 32 of the Proposed Amendments implies that the language of section 32(3) creates such a standard for dealers and advisers in the same manner as for investment fund managers under section 32(4)(a) of the Proposed Amendments. However, in our view, there is a significant difference between sections 32(3) and 32(4) of the Proposed Amendments as drafted. Prescribing different duties for investment fund managers than for other registrants is confusing and difficult to rationalize. To provide an even playing field for all market participants in Ontario and greater protection to investors, we urge the Ministry of Finance to impose the statutory standard of care currently imposed on unregistered investment fund managers in section 116 of the Act, and to be reformulated as section 32(4) of the Proposed Amendments, on all registrants and delete section 32(3).

In addition, while we recognize that section 116(2) of the Act currently imposes a statutory standard of care on unregistered investment fund managers, we query why the Proposed Amendments do not impose a similar statutory standard of care on advisers and dealers. In our view, investors would be best protected and the integrity of Ontario capital markets best maintained if statutory duties and standards of care were imposed equally on all registered firms.



Drafting Comments

Section 29 of the Proposed Amendments extends the right to be heard to individuals seeking to be registered as a registered representative. In our view, the right to be heard should also be extended to the registered firm in respect of which the individual is seeking registration as a registered representative.

We would appreciate clarification on the rationale for section 32(1) of the Proposed Amendments. As non-compliance with any provision of Ontario securities laws (as defined) will already constitute an offence under section 122(1)(c) of the Act, we query why a general mandatory compliance section is also required. In any event, the reference to regulations is subsumed in the definition of Ontario securities law. We recognize the informative value of the list in section 32(1), but note that non-compliance with a provision of Ontario securities laws will trigger two breaches, the specific requirement and section 32(1).

It is our view that section 39(3) of the Act will need conforming amendments.

Responses to Specific Comments

In response to the Ministry of Finance's question regarding whether registration should be required only if activities are undertaken on a commercial basis, in our view the business trigger is appropriate. Using a common threshold test for advisers and dealers will facilitate the efficiency of the Ontario capital markets. The discussion of the business trigger in the companion policy to NI 31-103 provides helpful guidance. In our view it would be rare for a person or company to carry out securities dealing or advising activities as a "commercial enterprise" but without the intention to earn a profit or receive compensation.

Conclusion

AIMA fully supports the efforts of the CSA and the Ministry of Finance to achieve the policy goals reflected in NI 31-103 and the Proposed Amendments. We believe the changes to the Proposed Amendments described in this letter are required in order to effectively achieve the policy goals of both the CSA and the Ontario Provincial Legislative Assembly in a manner which balances policy concerns with business realities and provides clarity of regulatory requirements for all capital market participants.

We appreciate the opportunity to provide the Ministry of Finance with our views on the Proposed Amendments. Please do not hesitate to contact the members of the AIMA Canada working group set out below with any comments or questions you might have. We would appreciate the opportunity to meet with you in order to discuss our comments.

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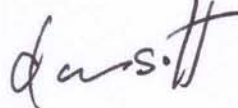
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Yours truly,

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