



## Alternative Investment Management Association

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
U.S.

Sent by e-mail to: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

15 June 2012

Dear Ms Murphy,

The Alternative Investment Management Association (“AIMA”)<sup>1</sup> welcomes the opportunity to submit its comments to the Securities and Exchange Commission (the “SEC”) in advance of its regulatory implementation of the Jumpstart Our Business Startups Act (the “JOBS Act”).

AIMA support the purpose of the JOBS Act, the improvement of access to capital and enhancement of economic growth by reducing unnecessary regulatory burdens. In particular, we support the elimination of the prohibition on general solicitation and advertising for issuers raising capital from accredited investors and qualified institutional buyers, as long as all purchasers are accredited investors. We also support the increase of the shareholder threshold for registration under the Securities Exchange Act from 500 persons to either 2,000 persons or 500 non-accredited investors.

In particular, AIMA would like to express a full support for the positions expressed by the Managed Funds Association (“MFA”) in a letter dated 4 May 2012<sup>2</sup> to the SEC regarding the request for comments on regulatory Initiatives under the JOBS Act.

In addition to what has been stated by the MFA, AIMA would like to point out the fact that a number of important hedge fund manager jurisdictions do not impose restrictions which are as stringent as the ones currently imposed on private funds in the United States. With the advent of greater regulation, transparency and oversight of the industry, we believe that the general solicitation and advertising restrictions are outdated in relation to what we see as more flexible marketing and advertising regimes adopted elsewhere in the world. By way of example, we would like to draw your attention to two important hedge fund manager jurisdictions which do not maintain generalised prohibitions related to manager advertising or solicitation.

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<sup>1</sup> 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 40 countries.

<sup>2</sup> <https://www.managedfunds.org/issues-policy/mfa-comment-letters/mfa-submits-comments-to-sec-regarding-upcoming-implementation-of-the-jobs-act/>



## The European Union

The Alternative Investment Fund Managers Directive<sup>3</sup> (the "AIFMD") regulates marketing of alternative investment funds ("AIF")<sup>4</sup> within the EU. According to the AIFMD, authorised EU alternative investment fund managers ("AIFM") have a passport to market EU AIFs to professional investors in the EU member states. Marketing is defined as any offering and placement at the initiative of the AIFM or on behalf of the AIFM of the units or shares of an AIF it manages to EU investors. The AIFMD does not further specify what forms such marketing may take and it does not include prohibitions on advertisement or general solicitation. AIFMs must, where relevant, establish arrangements to prevent AIFs from being marketed to retail investors.<sup>5</sup>

The distribution and marketing of AIFs may be also subject to the Prospectus Directive<sup>6</sup>. The Prospectus Directive harmonises requirements for the drawing up, approval and distribution of a prospectus to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within a Member State. Any type of advertisement relating either to an offer to the public of securities or to an admission to trading on a regulated market must observe certain principles contained in the Prospectus Directive. Inter alia, advertisements must be clearly recognisable as such and the information contained in an advertisement must not be inaccurate or misleading.

The obligation to publish an approved prospectus does not apply to the following types of offer:

- an offer of securities addressed solely to qualified investors<sup>7</sup>; and/or
- an offer of securities addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors; and/or
- an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100000 per investor, for each separate offer; and/or
- an offer of securities whose denomination per unit amounts to at least EUR 100000; and/or
- an offer of securities with a total consideration in the Union of less than EUR 100000, which shall be calculated over a period of 12 months.

## Hong Kong

The Hong Kong legal and regulatory regime governing the offer, distribution and marketing of interests in a collective investment scheme ("CIS") (including a hedge fund) is primarily contained in (i) the Companies Ordinance (the "CO") where the CIS is structured as a company and (ii) the

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<sup>3</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010

<sup>4</sup> AIFs are collective investment undertakings, including investment compartments thereof which do not require authorisation pursuant to Directive 2009/65/EC of 13 July 2009 on the Coordination of laws, regulations and administrative provisions relating to Undertakings for Collective Investment in Transferable Securities (UCITS)

<sup>5</sup> Member States may decide to permit the marketing of AIFs or certain types of AIFs to retail investors.

<sup>6</sup> Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC.

<sup>7</sup> Qualified investors are persons or entities that are described in points (1) to (4) of Section I of Annex II to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (MiFID), and persons or entities who are, on request, treated as professional clients in accordance with Annex II of MiFID, or recognised as eligible counterparties in accordance with Article 24 of MiFID unless they have requested that they be treated as non-professional clients.



Securities and Futures Ordinance (the "SFO") which regulates to a large extent the marketing activities associated with the offering of "securities" generally, including a CIS structured as a company, limited partnership or a unit trust. Accordingly, the offering, distribution and marketing of a hedge fund in a corporate form will be governed by both the CO and the SFO. The SFO (with subsidiary legislation and rules) also sets out the licensing and conduct of business requirements on managers and advisers.

Hedge funds authorised for distribution to the retail public under the SFO and the Code of Unit Trusts and Mutual Funds can be advertised and marketed to the public subject to a minimum initial subscription of USD 50 000 (or the currency equivalent), or for funds of hedge funds USD 10 000 (or the currency equivalent). No minimum investment is required for 100 per cent capital guaranteed funds. Advertisements and other invitations to invest in a hedge fund must comply with advertising guidelines which are included in the Code on Unit Trusts and Mutual Funds.

### Conclusion

AIMA strongly supports the elimination of the prohibition on general solicitation and advertising for issuers raising capital from accredited investors and qualified institutional buyers, as long as all purchasers are accredited investors. We hope you will find our submission helpful and stand ready to be of assistance and to answer any questions you may have in relation to its content.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "J. Król", is written in a cursive style.

Jiří Król  
Director of Government and Regulatory Affairs