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Dutch Ministry of Finance
Korte Voorhout 7
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Submitted via online portal

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Dear Sir/Madam,

AIMA's response to the Ministry of Finance Implementation Act Registration Ultimate Beneficial Owners of Trusts and Similar Legal Arrangements consultation

The Alternative Investment Management Association Limited (AIMA)¹ appreciates the opportunity to submit its comments to the Ministry of Finance in relation to the consultation on the Implementation Act Registration Ultimate Beneficial Owners of Trusts and Similar Legal Arrangements ('the proposal').

We understand the Dutch Government's commitment to combat the misuse of Dutch investment funds, including by increasing the transparency of fund ownership and control. AIMA supports this.

Our members recognise that regulatory authorities need supervisory and enforcement tools that can detect and punish illegal and abusive behaviour when it occurs. Effective and dissuasive sanctions against individuals and entities that have engaged in illegal activities are key, including, where appropriate, administrative or criminal sanctions. As other jurisdictions have implemented the EU's Fourth Anti-Money Laundering Directive,² we have raised concerns about the scope and

¹ AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with more than 1,900 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than \$2 trillion in assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 100 members that manage \$350 billion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA's website, www.aima.org.

² Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

nature of the ultimate beneficial ownership ('UBO') reporting requirements and the level of public access to sensitive information about shareholders.

With respect to this consultation, we have some concerns about the discrepancy that would arise from this proposal between the reporting requirements for corporate entities and non-corporate entities, the level of information about participants in a fund that need to be reported and the frequency with which such reporting might have to be done if these requirements are indeed to be applied to funds for joint account (*fonds voor gemene rekening*) ('FGR').

An extension of the requirements for reporting information about participants to any Dutch FGR, raises three principal concerns for our members:

1. The creation of a register of UBO information for trusts and similar legal arrangements and the separate establishment of a register for corporate entities creates a discrepancy in terms of reporting requirements that will disproportionately affect FGRs.

The proposal, as mentioned, seeks to establish a public register of information related to the UBOs of trusts and other similar legal arrangements. We understand that the Ministry of Finance has also submitted a draft act on the registration of UBOs in corporate entities and similar legal arrangements (the 'Act Corporate Entities'), which is currently being debated in the Dutch Senate. The Act Corporate Entities defines the UBO as an individual who directly or indirectly holds more than 25 per cent of the shares, the voting rights or the ownership of the company and who is required to be registered on the public register.

We note that the proposed shareholder disclosure requirements for trusts and similar legal arrangements currently does not set a similar threshold of 25 per cent. In fact, the proposal requires all UBOs, regardless of the size of their participation rights, to be registered and to have their information be registered and publicly available. We believe that this particularly disadvantages FGRs over corporate entities, such as funds that are either structured as a limited liability company (*besloten vennootschap*) ('BV') and a public company (*naamloze vennootschap*) ('NV'). It is important to note that both corporate and non-corporate funds are created for the purpose of serving as vehicles for collective investment schemes and both serve retail and/or institutional investors. The proposal seeks to introduce a particular set of requirements for FGRs that is materially different from the one proposed in the Act Corporate Entities and will, we believe, disproportionately affect UBOs in FGRs.

We would, therefore, ask the Ministry of Finance to set a minimum threshold that would define UBOs (for at least FGRs) in line with the threshold proposed (i.e., 25 per cent) in the Act Corporate Entities. We believe that not maintaining the 25 per cent threshold would be a 'gold-plating' of how similar funds are generally treated in the European Union.

2. The collection by the Chamber of Commerce of the names, country of residence, nationality, birth month, birth year and the nature and extent of the economic interest of participants in FGRs raises data protection concerns and may cause investors to choose to avoid investment in FGRs established in the Netherlands.

Having data such as names, addresses and birth dates of the participants in a collective investment scheme potentially available to the general public directly through a public

register or indirectly through freedom of information requests, raises data protection concerns and personal security concerns. These concerns could lead some investors to choose to avoid investments in funds established in the Netherlands. This concern is magnified in the case of FGRs where even a small holding will result in this level of public disclosure.

If beneficial ownership information is publicly accessible, it will fail to recognise the important distinction between the legitimate need for privacy and unjustified secrecy. Investors may have legitimate reasons for wanting to have their participation ownership in an FGR to remain non-public. Although the proposal recognises that some participants, by having their information published on the register, may become susceptible to a higher risk of fraud, kidnapping, blackmail, intimidation or violence, they have no recourse for requesting the Chamber of Commerce to shield their information. According to the proposal's explanatory memorandum (*Memorie van Toelichting*), the Chamber of Commerce will only assess participants' concerns on their inclusion on the register based on their possible admittance on the Circular Surveillance and Security of Persons, Objects and Services 2015 (*Circulaire bewaking en beveiliging van personen, objecten en diensten 2015*) ('Circular'). We note that individuals listed on the Circular are persons to whom the Dutch police authorities provide (physical) protection to.

Should the proposal be implemented in its current form, we believe that participants should be provided with alternative, less stringent, safeguards through which they are able to protect their personal information and interests. In this regard, we refer to the Act Corporate Identities which provides UBOs the opportunity to submit a request to the Chamber of Commerce to conceal their personal information if this can be argued citing legitimate concerns. We, therefore, ask the Ministry of Finance to include this particular safeguard in the current proposal as both FGRs and corporate entities serve investors who have entered into a discretionary investment management agreement and who hold a purely economic interest in an investment fund (i.e., passive investors). We consider that, when determining whether an individual should be eligible for protection, consideration should be given to both whether information about the relevant individual is readily available to regulators and the potential for harm to that individual.

In addition, as specified public authorities will continue to have access to the expanded non-public information on the register, certain fundamental principles should always be protected to the fullest extent possible: confidentiality, consistency, appropriate use (of information) and data protection. There should be a balance maintained between the collection of sensible information and protection of the Dutch business environment.

- 3. The proposed frequency of reporting changes (within 7 days of any change) would be untenable for open-end FGRs, especially those that allow daily subscriptions and redemptions, as the identity of the participants may change daily.**

Open-end FGRs often have numbers of participants measured in the hundreds and thousands rather than in single or double digits. In FGRs that offer daily dealing, the list of investors and the numbers of participation rights each investor owns can change daily. In this type of situation, this would lead to having to notify changes to the Chamber of Commerce on a daily or near daily basis.

This is made even more challenging by the omission in the proposal of a minimum threshold that would be indicative of a significant interest. This means, in effect, that all participants in an FGR, regardless of the size of their participation rights, will have the abovementioned information published on the public register. We believe that this will bring increasing administrative burdens and costs to an extent that is not proportionate to the perceived benefit this proposal aims to bring.

We note that for the other types of entities covered by the proposal, the requirement to report any material changes within seven days would be less burdensome and not as challenging as it would be for daily dealing funds as beneficial ownership changes are likely to occur with much less frequency.

In effect, and reiterating the point made above on the discrepancy between the treatment of FGRs and other types of open-end funds, FGRs will be required to report changes as relates to all UBOs and not just the more infrequent changes in the information about investors over the 25 per cent threshold.

We would, therefore, ask the Ministry of Finance to consider the practical effects of the proposal on open-end FGRs and to consider excluding them from the scope of the draft act. If, however, this is not possible, we would ask to provide open-end FGRs with an extended frequency of reporting of 30 days as this would enable them to provide accurate information on UBOs without compromising the integrity of the information held on the register.

To the extent that these proposed disclosure provisions are extended to FGRs, the effectiveness of such vehicles for improving the competitiveness of the Netherlands could be significantly diminished where such requirements do not exist in other comparable jurisdictions.

If unaddressed, the abovementioned concerns could lead some individual investors, investment managers and funds to choose to avoid investments in FGRs.

We hope you find our comments useful and we would be happy to elaborate further on any of the points raised in this letter. We have no objection for our response to be published. For further information please contact Jennifer Wood, Managing Director, Global Head of Asset Management Regulation and Sound Practices (jwood@aima.org).

Yours sincerely,

A handwritten signature in blue ink, appearing to read "J. Król".

Jiří Król
Deputy CEO, Global Head of Government Affairs
AIMA