

July 12, 2004

C/o Secretary to the Commission
Ontario Securities Commission
20 Queen Street West
Suite 1903. Box 55
Toronto, Ontario
M5H-3S8

**Re: Ontario Securities Commission Staff Notice 31-712 – Mutual Fund Dealers
Business Arrangements**

The following is Canfin Magellan Investments Inc. response to the above Staff Notice issued on June 11, 2004.

Question 1

Do you agree with the description of current industry trends? Are you aware of any other similar changes?

As a Dealer our experience has not reflected this trend. Canfin at this time does not have any omnibus accounts or a joint service arrangement. However as clients become more sophisticated they may seek to have a wider range of investment products and it may be advantages for them to have one account. Based on our experience as a Mutual Fund dealer we see this possibility as the exception and not the rule.

Question 2

Are there other relevant business arrangements that have developed in response to these industry trends? If so, please describe.

We at Canfin are not aware of other relevant business arrangements between mutual fund dealers and investment dealers, with the exception of referral arrangements. Investors are referred to investment dealers for a referral fee. Investor opens an account with the investment dealer for non-mutual fund securities, which is separately held from their mutual fund account. The mutual fund dealer is usually paid a fee for referral from the investment dealer.

Question 3

How are clients being properly served when only a portion of the portfolio held by the mutual fund dealer can be serviced by the mutual fund dealer?

As a mutual fund dealer we believe that we can and have properly service our clients. The portfolios we have as a dealer consist of investment products that we are registered to distribute only. Canfin at this stage does not have omnibus account arrangements, however it is our understanding that sophisticated investors may only require a facility to execute transactions on a non-mutual fund security and not necessarily need advice or service from a representative. As well investors may need to deal with more than one advisor in an IDA firm, depending on the security being transacted. We do not see this as being a dis-service to the investor.

Question 4

What actions can be taken to ensure that the mutual fund dealer sales person is acting within the terms of his/her registration regardless of client pressure?

Mutual Fund dealers are governed by the rules and regulations of the MFDA. As a MFDA member we are required to have compliance programs that are structured to include policies, procedures, client reporting, statements and systems to prevent prohibited securities. These controls are both preventative and detective and establishing additional controls may be redundant.

As a dealer we must ensure that a mutual fund sales person is acting within the terms of their registration, which will ensure that the existing regulatory requirements are adhered to.

For referral arrangements the referral agreement disclosure must reflect that the mutual fund advisor is not licensed and cannot provide advice on equities of non-exempt securities, which the investor acknowledges and the representatives are aware of their obligation not to advise in securities where they are not licensed.

The statement that the dealer sends to the investor discloses the name of the mutual fund dealer and the advisor for mutual funds. There will be no other security position or activity reflected that did not take place through the mutual fund dealer on the dealer statement. Accordingly the dealer should be able to record as a portfolio summary in accordance with MFDA Member Regulation Notice MR-0024. The mutual fund portion will be reflecting activity as well as balances. The non-mutual fund portfolio summary would reflect balances and market values only.

Question 5

What actions, if any are being taken by mutual fund dealers to ensure that clients are aware of the lack of coverage on assets held by the mutual fund dealers at investment dealers? What actions should be taken in this regard?

At this time there is no contingency fund coverage for mutual fund dealers. The MFDA is in the process of establishing a contingency fund for mutual fund dealers.

MFDA Portfolio Summaries (MR-0024) state MFDA Members and their Approved Persons that wish to issue consolidated information to clients can only provide such information in addition to, and not in place of, the account statements required by MFDA Rule 5.3 (Client Reporting). Strict adherence to MFDA Portfolio Summaries (MR-0024) must be enforced.

We at Canfin do not have any accounts in this position, nor do we have experience as a mutual fund dealer holding assets at an investment dealer, therefore further comments pertaining to this question would be speculation on our part.

Question 6

What controls or requirements could be put in place to ensure that mutual fund dealers are only trading and providing advice on mutual fund securities, while allowing clients to consolidate their holdings in one account?

Some mutual fund dealers are also limited market dealers and are permitted to provide advice that is incidental to a trade in an exempt security and there appears to be no reason to limit the advice provided in these qualified circumstances to be restricted to providing advice on only mutual funds. A mutual fund dealer that is also a limited market dealer should not be restricted from advising on Canada or Ontario Savings Bonds or Guaranteed Income Certificates. Controls and requirements can be categorized by: defined trade processes, electronic trade processing systems, general rules and regulations and compliance reviews and audits.

Mutual fund dealers who report non-mutual fund holdings in the form of consolidated information or portfolio summaries (in addition to their account statements) should monitor and look for patterns that may reflect a problem. These can then be red flagged for the compliance officer to review.

If the client has a large portion on non-mutual fund assets in their account, then a red flag should be raised or the client should be advised by the mutual fund dealer to transfer their account to an investment dealer.

Question 7

Under our current regulatory framework, what actions, if any, can be taken to address concerns regarding supervision of sales persons in joint service arrangements? How can clear lines of responsibility of each of the dealers be maintained?

We at Canfin do not have any joint service arrangements nor do we have any experience in this matter. We feel that any comments in relation to this question would be speculation on our part.

Question 8

How can we ensure that the responsibility and liability of dealers in joint service arrangements to clients is clear?

As noted in our response in *Question 7* above, we do not have any joint service arrangements nor do we have experience in this matter. We feel that comments in relation to this question would be speculation on our part.

Question 9

What controls, if any, could be put in place to prevent client confusion?

At Canfin we do not have experience or any accounts in this position, any comments would be speculation on our part.

Question 10

Can you suggest any alternative solutions that would address the supervisory, accountability and liability issues that arise when salespersons act on behalf of two dealers?

At Canfin we do not have experience in this matter nor do we have any accounts in this position, any comments would be speculation on our part.

Question 11

What changes, if any, would you support so as to allow the mutual fund salesperson to service the investment dealer account?

Referral arrangements as is described in section *D Alternatives Considered* section *1 Referral Arrangements* of OSC Staff Notice 31-712 would be the most appropriate arrangement at this time. We do not believe that a mutual fund sales person should service an investment dealer account nor would we encourage this practise. However we would welcome a continued discussion on this matter in order to explore all possibilities and their impact on dealers, salespersons and the investor.

Question 12

Referral arrangements require that clients have separate accounts at each dealer, instead of one consolidated account. The need for separate accounts may raise issues of convenience from the client's perspective; beyond this, are there any issues or consequences of referral arrangements that we should be aware of?

We do not see any significant issues as a consequence of referral arrangements, with the exception of foreign content management on two separate registered plans as well as the cost of maintaining more than one account.

Question 13

If the MFDA/IDA introducer/carrier model contemplates two dealers servicing one client account, how can clear lines of responsibility (including supervision, accountability and liability) of each of the dealers be maintained? Alternatively, if this introducer/carrier model contemplates two dealers servicing two client accounts, how does this meet the clients needs? Furthermore, what actions can be taken to ensure that the mutual fund dealer salesperson is acting within the terms of his/her registration?

As a mutual fund dealer we do not have any experience in dealing with IDA firms nor are we familiar with the IDA business model and their regulatory requirements. Any comments that Canfin would submit in relation to this question would be speculation on our part.

Question 14

Are you aware of any arrangements that would allow a mutual fund dealer to service its clients' need for one consolidated account, yet do not raise these regulatory concerns?

MRS currently has a process that involves their IDA member, MFDA member and their Trust Company, which serves to keep trading and reporting lines clear. Trading in non-mutual assets takes place at the IDA member firm by the investor who provides instructions indicating that on the settlement date the assets are to be delivered to his/her registered plan held at the Trust Company for settlement.

Question 15

What are the alternative solutions to the issues raised by the OSC with respect to joint service and omnibus account arrangements? Do these solutions require changes to the regulatory structure or requirements?

At Canfin we do not have any joint service or omnibus account arrangements, therefore any comments would be speculation on our part.

Question 16

Does a restrictive dealer registration category continue to be appropriate in the current business environment where clients want to have one consolidated account and be serviced by one sales representative?

The restricted dealer category continues to serve an important need by providing investors with cost-effective access to diversified mutual fund products.

Proposing an overhaul of the restricted registration category is not warranted without evidence of a pattern of abuse that is occurring or being facilitated as a result of this registration category. If there is evidence of such abuse, rigorous enforcement of existing rules would be the most appropriate method of dealing with it instead of industry wide changes to legitimate and useful business practices.

In recent years, many employers have moved to eliminate defined benefit pension plans for their employees. The average person must now rely to a greater extent on his or her own savings and investing to provide for their retirement than has been the case in the past. These investors, who usually only have modest amounts to invest, have turned to

mutual funds to improve their investment returns while diversifying their portfolio to an extent that would not be possible if they were investing in individual securities. Mutual fund dealers and mutual fund sales persons provide low cost and safe access to the market for these investors. Many of these accounts may have balances of \$5,000.00 or less. Investors in this demographic also engage in monthly trades, by way of pre-authorized chequing. This is not an uncommon practice and the monthly investment total can be as little as \$25.00.

Many investors in this demographic are investing mostly in registered retirement and registered education savings products as they have little disposable income and must to a greater degree more than affluent investors, look to meet their investment objectives over the long-term. We are hoping that the OSC take this into consideration and remain sensitive to this fact. Full service brokers would probably not be able to and would have no economic incentive, to provide affordable investment alternatives to this market segment. The possible and proposed elimination of the mutual fund dealer registration category, in favour of a registration system that adopts a more “one size fits all” approach, would completely disenfranchise small net worth investors.

We are concerned that this may result in confronting mutual fund dealers with the option of either joining the IDA or getting out of business.

We believe that the concerns raised in this staff notice can be addressed within our existing regulatory framework with the development of better reporting and monitoring and more rigorous enforcement of existing penalties for those who are found in violation of trading limitations that their license carries.

Question 17

If mutual fund dealers and investments dealers are required to unwind the joint service and omnibus account arrangements, what will the impact be to your firms clients, as well as your firm, and how long do you anticipate this will take?

Our firm does not presently have any omnibus or joint service account arrangements with an investment dealer therefore it would not presently have an impact on our dealer or our clients.

I hope the above information adequately addresses the issues and concerns raised in the OSC Staff Notice 31-712. Should you have any questions or require further clarification pertaining to any of the responses above, do not hesitate to contact me.

Sincerely

Canfin Magellan Investments Inc.

Manuel G. DaSilva
President