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John Stevenson
Secretary
Ontario Securities Commission
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By e-mail to: jstevenson@osc.gov.on.ca

Re: Proposed NI 31-103

Dear Mr. Secretary,

I am a principal of Chartwell Asset Management Inc., a BC-based portfolio management firm and of Magna Mutual Funds Inc., an unregistered fund manager. The proposed National Instrument above (the "rule") affects our businesses in a number of different ways and I am writing to formally comment on the rule as per the Canadian Securities Administrators ("CSA", "you", "your", etc.) notice and request for comment dated February 20th, 2007.

I will break down my comments into two parts: General and Specific, with specific comments being those on aspects of the rule that may affect the way we do business.

1. GENERAL COMMENTS (in no specific order):

1.1 We applaud your efforts to streamline, modernize and harmonize registration requirements and exemptions in Canada. We believe the above objectives are great objectives upon which to devise the registration "rulebook" and that ***the proposed rule goes a long way in achieving*** *the* above *objectives*, particularly the ***modernization and harmonization*** parts. The streamlining, if this includes simplifying, needs some more work done. Hopefully, you will find our comments helpful.

1.2 We are disappointed that as part of the modernization process you may have missed a very good opportunity to, through the tool of registration, further advance the main objectives of securities legislation (i.e. to protect investors, preserve market integrity and enhance efficiency and competitiveness.) Today in Canada smaller and less sophisticated investors, i.e. those that require protection the most, are served by the least proficient financial advisors! The proficiency requirements for "dealing representatives" of mutual fund dealers are so low that it is easier to become a financial advisor in Canada than it is to become a plumber! Yes, in theory such representatives are not supposed to call themselves "financial advisors" but in reality the investing public does not know or understand the difference between registration categories. To the investing public all registrants are financial advisors. We believe that the ***proficiency requirements across all categories of registration are too low*** and that raising them would be the single most effective measure in achieving the first two objectives of securities legislation, i.e. to protect investors and preserve market integrity. (A close second is probably disclosure.) We understand you will be responding to public comments on the rule such as ours and therefore we hope you will respond to ours: Why are Canada's proficiency requirements for registration as "financial advisor" so low? Have you given any thought to abandoning such flawed concepts as "limited dealers"?

1.3 While the rule lowers proficiency requirements for individuals making it perhaps easier for individuals to register, in general it raises the barriers to entry for firms as is clearly the case with fund management companies, as new solvency and other requirements are proposed for fund managers making it more expensive and more expensive for new companies and new funds to start up. ***The rule does not help enhance competitiveness***, as it is in fact against competition, not in the public interest but very much in the oligopolistic Canadian banks' interests and their lobby groups, the so-called self-regulatory organizations of the IDA and MFDA. We understand that both the IDA and the MFDA have been involved through consultation and other means in the drafting of the rule. While in our democratic system, your rule making powers stem

from democratically elected legislatures that enacted the various provincial Securities Acts, the industry lobby groups of the IDA and MFDA do not have such powers. These industry lobby groups do not have a duty to serve the investing public. Their duty is to their members and the members' shareholders. Their suggestions may very well not be in the public interest. We therefore ask you, in the spirit of transparency in rule making, to disclose any part of the rule, specific wording, absence of specific wording, etc that is a direct result of IDA or MFDA "suggestions".

1.4 The rule appears to be a reaction to recent high profile scandals such as the Portus scandal, the mutual fund market timing scandal as well as to the SEC's attempts to more closely regulate hedge funds – in other words a reaction to recent headlines. While there is nothing wrong with updating or modernizing rules to keep pace with changes in the industry, we would suggest to you that there is a risk of rules becoming too prescriptive. Also, the answer to the question of how best to prevent or deal with such problems may be to ***enforce existing rules better rather than come up with new ones***.

1.5 Last, and this is a point does not concern us but may be it should concern you, some may argue that any fit and proper [including proficiency] ***registration requirements [i.e. the rule] may violate the Canadian Charter of Rights and Freedoms***, by denying guaranteed freedoms such as the freedom of opinion and the freedom of expression. Advisers in particular (as opposed to underwriters and dealers) are in the business of expressing opinions and getting paid for those opinions. Perhaps denying/revoking/suspending registration to any adviser for any reason violates the Charter.

2. SPECIFIC COMMENTS (in order of importance to us)

2.1 Currently, under NI 45-106, 2.3(1) a portfolio manager acting on behalf of a fully managed account is not required to be registered as a dealer under any circumstance. There is a similar exemption in the rule, subsection 2.2(1) but only for securities of the adviser's own pooled fund. We ask that you extend the exemption to all securities, i.e. keep the existing exemption offered by NI 45-106 2.3(1). Advisers, when acting on behalf of fully managed accounts are deemed to be purchasing as principals, not just because of NI 45-106 2.3(5), but also because technically a managed account is most likely a valid trust with the adviser as the trustee. In acting on behalf of the fully managed account the adviser would always be purchasing as a principal just as the trustee would be on behalf of a trust. Dealer registration under a business trigger would not be required as the adviser would never be acting as an intermediary and being in the business of dealing in securities would necessarily involve acting as an intermediary. Please comment. In page 4 of your notice and request for comment you state that "*the business trigger is not intended to capture individuals who are buying and selling securities for their own account and who do not have direct access to a marketplace*". That would be the case with advisers acting on behalf of fully managed accounts. In the interest of simplifying, or streamlining we ask that you clearly exempt advisers when acting on behalf of fully managed accounts from any dealer registration requirement.

2.2 We do not quite understand subsection 5.17 of the rule. In managing hedge funds in particular advisers not only permit the purchase of securities on margin but cause it.

2.3 We believe the investment fund manager registration category is altogether unnecessary. Investment funds are already regulated in a number of ways: They have fund advisors that are registered as portfolio managers; they issue securities and are regulated as issuers; they are organized as trusts, corporations or partnerships and are governed by trust, company or partnership law respectively. The recent problems in the industry such as Portus and mutual fund "market timing" could perhaps been prevented by better enforcement of existing rules. For example, Boaz Manor, the founder of Portus should never have been registered as he lacked the minimum proficiency requirements. I personally met with Mr. Manor about 4 years ago when Mr. Manor was trying to sell his company's funds to a related dealer's representatives and I participated in a consulting capacity to the dealer's principals in a sales presentation he gave to them. Within 15 minutes I concluded that Mr. Manor was not fit for registration as a portfolio manager. He lacked the experience (managing assets on a discretionary basis is not something that can be taught through CSI or CFA type courses or university). He never worked under the supervision of a registered portfolio manager before he got registered. He also lacked basic securities knowledge. I had to explain to him what income trusts were! He also lacked a basic understanding of securities law, tax law or derivatives, yet the structure his firm was using for their funds utilized derivatives. Unfortunately the OSC is to blame for Portus and not the lack of a registration category for fund managers.

2.4 The excess working capital formula for investment fund managers is bad. It severely penalizes small but growing fund companies. It raises startup costs for new funds and new fund companies and therefore raises barriers to entry. Furthermore, it really does not reduce the risks of a fund collapsing nor the costs of dissolving the funds if the operations of the manage cease. Here is why: Let's say a new fund company is started operating one or two funds. Let's also say they managed to issue $100 million of mutual fund securities through dealers on a deferred sales charge (DSC) basis. That means the fund manager (not the funds) has had to pay about $5 million in commissions right away. Funds sold on a DSC basis are subject to a lock in agreement with a penalty for redeeming within a pre-specified period. The fund manager is able to borrow $5 million from the bank in order to pay the upfront commission to the dealer and repay it over let's say 5 years because the fund manager is guaranteed to make over $5 over the 5 years because of the lock in provision. This fund manager will now be required to have current assets of greater than $1 million [roughly the current portion of the debt] plus the proposed $100 thousand, which of course is not likely to happen for a start up fund. As you can see the proposed formula kills the growth of small fund managers.

2.5 We see no value in the creation of the "exempt market dealer" registration category. In fact registration of exempt market participants may have some very undesirable consequences: raising the cost of capital for small start up firms; creating more "financial advisors" in the eyes of the investing public. The concept of limited dealer is generally flawed. Individuals that serve the investing public should either be properly qualified (and allowed) to offer advice on all financial matters, or none at all. The comment is addressed to all Canadian Securities Administrators, including British Columbia that we believe have the right idea in not wanting to participate in this.

2.6 2.2(2) A fully managed account is not a fully managed account if the portfolio manager does not have genuine discretionary powers to manage the account so this subsection is superfluous.

2.7 Eliminating the Investment Counselor category of registration may not be such a good idea. Having discretion versus having no discretion is an extremely important distinction. In trust law, discretionary powers for the trustee would be a necessary (but not sufficient) condition for the formation of a valid trust. We believe maintaining the two categories is a good idea and imposing experience requirements for registration as a portfolio manager like the ones BC currently has (for an individual to have worked under the supervision of a registered portfolio manager for three years) is extremely important. A person cannot be taught in school what it is like to take on the responsibility of a fiduciary.

2.8 4.9 Relevant investment management experience should be different for portfolio managers rather than investment counselors (see the previous point). Also, lowering the experience requirement from five years to four is a bad idea (just think of people like Boaz Manor – no discretionary portfolio management experience). We should not be making it easier for unfit individuals to register.

2.9 4.10 The creation of the associate portfolio manager individual category is a good idea.

While we have a lot more comments we would not want to not dilute the importance of the comments above. If you would like a clarification of some of the comments or any additional information please do not hesitate to contact me.

We hope you find our comments useful and we look forward to your response.

Sincerely,

Constantine Lycos

Constantine Lycos, CFA
Vice-President, Director, Compliance Officer and Lead Portfolio Manager, Magna Funds.