Resolute Funds Limited

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April 9, 2008

Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8

Attention: John Stevenson, Secretary
e-mail: jstevenson@osc.gov.on.ca

Re: Proposed National Instrument 31-103 (the "Proposed Instrument")

Dear Sirs/Mesdames:

Resolute Funds Limited is registered as an adviser in the categories of investment counsel and portfolio manager ("ICPM") under the *Securities Act* (Ontario), and is the trustee, manager and investment manager of the Resolute Performance Fund, a private mutual fund sold by offering memorandum in Ontario, Alberta and British Columbia pursuant to the exemptions provided by sections 2.3 and 2.10 of National Instrument 45-106 Prospectus and Registration Exemptions ("NI 45-106").

We are pleased to make this submission in response to the request for comments on the second draft of the Proposed Instrument.

Our overriding concern with the Proposed Instrument is as follows: We do not believe that the potential additional protections and benefits that the Proposed Instrument will offer investors outweigh the increased costs and barriers to entry for smaller, independent investment advisors that will result. The Canadian asset management business is increasingly dominated by large firms and we feel that the Proposed Instrument, in its current form, will further serve to reinforce this process and will ultimately discourage competition in the form of new entrants as well as in respect of existing boutique managers. On balance, we do not believe that investors' interests are served due to the unintended consequences of the Proposed Instrument which will be to reduce the viability of smaller boutique portfolio managers.

Complexity of the Proposed Instrument

We have reviewed the Proposed Instrument and accompanying materials as best we could. Our initial observation is that the length and complexity of the documentation does not render it easily comprehensible for any non-lawyer, never mind an average investor.

The summary of comments received and the responses to those comments is 176 pages long. The materials directly relating to the revised draft of the Proposed Instrument comprise 139 pages of the OSC Bulletin. The additional supplement dealing with changes to related instruments (such as NI 45-106) is an additional 278 pages. This is a total of 593 pages. The amendments to the securities legislation of the various jurisdictions that will be necessary to implement the Proposed Instrument are not yet available, but will undoubtedly also run to a great many pages. All of the foregoing material is written in dense "legalese", and printed using a very small font size.

We appreciate that you are making a great many changes all at once, and that it may ultimately be helpful for the lawyers to have everything together in one or two instruments. We have found, however, the materials to be very complicated. In addition to the extremely large volume, this complexity makes it very difficult to extract the relevant points and develop an overall comprehension of the legislation. We also understand from speaking to our unitholders that, not surprisingly, they are having even more trouble than we are coming to grips with the proposed changes and understanding the potential costs, benefits and other implications that will ultimately flow to them. We believe that the regulators need to take additional steps to communicate the salient aspects of the Proposed Instrument to the end investor in a manner that will allow them to fully comprehend its implications. This is especially important in light of the fact that the increased cost burden that many smaller registrants will incur to comply with the Proposed Instrument will ultimately be passed on to the end investors.

In short, we feel it is incumbent upon the regulators to make the Proposed Instrument accessible to the average Canadian investor in a manner that is less overwhelming than the volumes and volumes of pages noted above.

Registration Categories

We note that we will automatically become registered as a portfolio manager (the new category of registration that supplants the ICPM category) on the date the Proposed Instrument comes into force, without the need for an additional application for registration. We commend the regulators for this approach. We will, however, still have to make an additional application to become registered as an "investment fund manager".

While mutual or pooled funds are generally viewed by the regulators simply as "products", in the prospectus-exempt market in particular we suggest that they should more typically be seen as a convenient and even necessary means of providing portfolio management services to clients whose relatively small asset size cannot support management on a segregated account basis. In particular, we do not believe that most portfolio managers could operate without utilizing pooled investment vehicles and still observe their obligations to act in the best interests of their clients and provide suitable investments for them. Unless portfolio managers restrict their services to only large institutional investors, and then only to those large institutional investors that are prepared to commit significant funds to the adviser for management, we believe it is very difficult for a portfolio manager to implement a cost effective and efficient investment strategy without employing pooled funds. As such, we conclude that the vast majority of investment counsel/portfolio managers will also need to become investment fund managers under the Proposed Instrument.

Given the very significant degree of overlap between the requirements for "portfolio managers" and "investment fund managers", we do not understand how the additional category of registration affords any meaningful additional protections or benefits to investors. As such, we suggest that any entity that becomes registered in the category of portfolio manager should automatically be deemed to be registered in the category of investment fund manager as well (at least as it relates to the management of their own pooled funds). This approach has been typically taken in the past with respect to investment dealers, for example, who were deemed to also have registration as underwriters on the basis that it made no sense to require investment dealers to obtain a second registration in order to carry out one of their primary lines of business undertaken under their primary dealer registration.

Providing an exemption would be an even better approach, in our view, than providing automatic registration. We note, however, that when a commentator on the previous draft of the Proposed Instrument asked whether a registered adviser would also be required to be registered as an investment fund manager in respect of their own pooled funds, the response was: "We will initially consider this issue on a case-by-case basis and, depending upon our experience, may subsequently adopt a uniform exemption".

We find this response encouraging, but somewhat puzzling. We would ask that the regulators provide some guidance as to the factors they intend to consider in determining whether to grant such an exemption. What would distinguish one portfolio manager from another in this regard, such that one would be entitled to an exemption from registration as an investment fund manager in respect of its own pooled funds and another would not? Furthermore, would it not be better to address these questions "up front" in the actual legislation rather than through the more cumbersome exemptive relief process?

If eliminating the requirement for registration (either generally or through exemptive relief) is not an approach that finds favour with the regulators, we suggest that at a minimum it would be appropriate to provide for a significantly streamlined registration process. For example, any registered portfolio manager could be permitted to obtain registration as an investment fund manager upon filing a simple notice indicating that it wished to add the additional category of registration, together with proof of obtaining the additional insurance required and a statement that the additional required working capital had been met (if our submissions below are deemed unacceptable).

Solvency Requirements

We continue to believe that the current working capital level requirement for advisers is sufficient for firms like ours that do not hold investors' cash or assets, who sell their funds through registered dealers (under structures which have the investor's funds going from the dealer through FundServ to the fund custodian and not under any circumstances through the adviser) and use third party custodians. We note that the revised proposal would exempt "exempt dealers" from the capital and insurance requirements to the extent that they do not handle, hold or have access to client cash or assets. We would expect the same rationale to apply to portfolio managers and investment fund managers as well. The power to direct a custodian as to the securities to be bought or sold in an account should not be taken as the power to direct that custodian to provide access to the adviser to the funds under management generally.

It is our belief that increasing the required level of working capital will reduce competition and further stifle the small/boutique fund industry. It seems that legislation is often constructed with large investment managers in mind, and without adequate regard to smaller independent firms. In our view, leaving the Canadian investing public captive to the large mutual fund firms and large financial institutions, and depriving them from increased competition through the choice of smaller players, can hardly be seen to be in their best interests. Similar comments were made by a number of people in respect of the previous draft of the Proposed Instrument, yet no response to these comments seems to have been provided (comment #293, for example, is silent on this point).

We are also concerned about the requirement to provide on a quarterly basis a report on working capital in Form 31-103F1. These requirements together with all the other regulatory filing and reporting already required of investment managers could all have the effect of distracting them from their primary responsibility of managing investors' funds to the best of their ability. Significant losses from portfolio decisions are experienced by investors every day. Conversely, we are curious as to: (a) how many losses there have been from a lack of solvency on the part of investment managers in Canada and how significant those losses have been; and (b) when firms have become insolvent (or come perilously close), whether the size of working capital has been much protection. What was the size of Bear Stearns regulatory capital immediately before it imploded?

Insurance Requirements

We originally commented that, in our view, insuring assets of a fund that has a quality third party custodian does not provide any material additional benefit for investors, and certainly not one that justifies the increased costs of obtaining the additional insurance we will be required to obtain. The Resolute Performance Fund has an independent custodian, RBC Dexia Investor Services Trust, a regulated trust company that is also a subsidiary of the Royal Bank of Canada. We do not, therefore, hold the Fund's assets, and we have no clients other than this Fund. The Fund is offered exclusively through registered dealers, and investors' funds go directly from the clients' accounts at those registered dealers through FundServ to the custodian.

This remains our view, and we have heard from a number of our unitholders that they do not want to have the burden of having to pay for insurance they do not want and do not feel they need.

The standard Financial Institution Bond which as a registrant we are required to maintain covers six insuring agreements: fidelity, on premises, in transit, counterfeit currency, forgery or alteration, securities, and redemption of Canada savings bonds. We obtain coverage for all of these except the redemption of Canada savings bonds.

"Fidelity" covers dishonest or fraudulent acts committed by our officers or employees; we discuss this below.

"On premises" insures us against loss of property while on our premises. As we do not have custody of our clients' funds or assets, the amount of coverage we obtain in this regard is irrelevant to investors. "In transit" covers loss of property while in transit. As we never have custody of our clients' funds or assets, investors are never at risk of loss from the movement of those assets out of our office. The amount of coverage we obtain in this regard is similarly irrelevant to investors. "Forgery or alteration" covers the forgery or alteration of securities or client instructions. Again, with securities being lodged with a custodian, the amount of coverage we obtain in this regard is irrelevant to investors. "Securities" covers losses from our having acquired or sold in good faith counterfeit securities; "counterfeit currency" similarly covers the acceptance of counterfeit money. These are each a custodial responsibility, and the amount of coverage we obtain in this regard is similarly irrelevant to investors.

What is relevant here in each instance is the insurance that our custodian obtains. The only possible insurance coverage of relevance to investors is fidelity.

As noted above, fidelity covers losses we suffer as a result of the dishonest or fraudulent acts committed by our officers or employees; provided that there is no coverage unless the officer or employee intended for us to incur such loss and the officer or employee personally obtains a financial benefit from the misconduct. Increased coverage in this regard would seem to afford investors very limited additional protections, in the context of an investment fund manager using independent third party custodians and dealers, each with their own insurance.

We note that the regulators are required to do a cost/benefit analysis prior to imposing additional regulation. We would appreciate seeing in the next draft of the Proposed Instrument a discussion of precisely what additional costs an investment fund manager would be expected to incur from this additional insurance coverage, based on discussions with the relevant insurance companies, and an analysis done as to the likelihood that such additional costs (invariably passed on to investors, whether directly or indirectly) are warranted in light of the limited benefits provided by these policies. Based on our own analysis, it is our view that the costs of obtaining the required additional insurance are far from commensurate with the marginal additional protections provided to investors.

We thank you for the opportunity to comment further on the Proposed Instrument.

Sincerely,

Tom Stanley

President, Resolute Funds Limited