MANAGED FUNDS ASSOCIATION
The Voice of the Global Alternative Investment Industry
WASHINGTON, DC | NEW YORK

May 29, 2008

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marches financiers
New Brunswick Securities Commission
Register of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Register of Securities, Northwest Territories
Register of Securities, Yukon Territory
Register of Securities, Nunavut

c/o Mr. John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West, 19th Floor, Box 55
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Anne-Marie Beaudoin
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Re: Comments on Proposed National Instrument 31-103 – *Registration Requirements*

Dear Sirs / Mesdames,

Managed Funds Association[1] ("MFA") appreciates the opportunity to make this further submission of comments in response to the revised Proposed National Instrument 31-103 – *Registration Requirements,* Proposed Companion Policy 31-103CP and Proposed Consequential Amendments (together, "NI 31-103") issued for comment on February 29, 2008. MFA submitted

[1] MFA is the voice of the global alternative investment industry. Our members include professionals in hedge funds, funds of funds and managed futures funds. Established in 1991, MFA is the primary source of information for policymakers and the media and the leading advocate for sound business practices and industry growth. MFA members represent the vast majority of the largest hedge fund groups in the world who manage a substantial portion of the approximately $2 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York.

a comment letter dated June 29, 2007 to the Canadian Securities Administrators (the "CSA") commenting on the previous version of NI 31-103.

MFA is dedicated to enhancing the understanding of hedge funds and their operations, fostering dialogue with regulatory authorities and otherwise improving communications between regulatory authorities and the alternative investment industry. MFA activities include educational outreach to and representation before, among others, the U.S. Congress, the U.S. Securities and Exchange Commission (the "SEC"), the U.S. Commodity Futures Trading Commission, the Federal Reserve Board of Governors, the U.S. Department of Treasury, state legislatures and international and foreign regulatory bodies such as the CSA.

INTRODUCTION

MFA members participate in the Canadian capital markets by providing sophisticated Canadian investors with alternative investment opportunities, raising capital from Canadian investors for U.S. or international hedge funds and investing in or trading in the securities of Canadian companies. Therefore, MFA has a strong interest in NI 31-103 and its potential impact on the activities of non-Canadian hedge funds and other alternative investment vehicles in the Canadian capital markets.[2]

I COMMENTS ON NI 31-103

MFA commends the CSA for many of the revisions in NI 31-103. Revised NI 31-103 addresses a number of significant issues identified by MFA in our previous comment letter. We provide the following comments on revised NI 31-103 for the CSA's consideration.

1.1 "Flow-Through" Analysis and Dealer Intermediation of Exempt Market Trades

We applaud the CSA's proposed elimination of the client "flow-through" analysis to adviser registration. We strongly support the elimination of the flow-through analysis in order to eliminate the cost of an unnecessary intermediary in the sale of fund units to sophisticated investors. The flow-through analysis meant that the advisers (broadly defined) to almost all non-Canadian hedge funds with Ontario investors needed either to be registered as an adviser in Ontario or sell fund units through an Ontario registered dealer. The investor protection rationale underlying the flow-through analysis is unnecessary in the context of hedge funds as investors do not need the protection of a registered broker-dealer or of the state when negotiating contracts or evaluating investment opportunities.

Notwithstanding the elimination of the flow-through analysis, MFA is concerned that NI 31-103 will still effectively require the use of a Canadian registered dealer because of the implementation of the "business trigger" and the uncertainties concerning whether the marketing and investment activities of hedge funds will require the funds or their advisers to be registered in Canada. In light of the compliance and legal risks associated with these uncertainties, it is likely

[2] MFA met with regulators from the Ontario Securities Commission ("OSC") to discuss NI 31-103 and the regulatory regime applicable to hedge funds in the U.S. and other major markets.

that many non-Canadian hedge funds will feel compelled to use a Canadian-registered dealer to sell their interests.

If a registered dealer is required to be involved in the sale of non-Canadian hedge fund interests, then that dealer must, among other things, satisfy know-your-client, suitability and anti-money laundering requirements with the investor, perform diligence on the fund (which from a practical perspective may be quite difficult for a dealer not otherwise involved in the investment) and negotiate a dealer agreement including fees and appropriate indemnities. These obligations would increase the transaction costs for a Canadian investor in a non-Canadian hedge fund. Sophisticated investors, such as pension funds, funds-of-funds and financial institutions make individualized determinations as to whether they need an intermediary in connection with an investment and are willing to bear the cost associated with using an intermediary. Sophisticated investors are capable of making investment decisions without an intermediary, or hiring an intermediary, if they deem it advisable. A rule that would effectively require all hedge fund investors to use an intermediary creates additional costs and complications without adding value to such investors.

MFA submits that the requirement for non-Canadian hedge funds to use a registered dealer or to become a registered dealer to sell funds to "permitted clients" in Canada should be removed entirely from NI 31-103, as it raises costs for sophisticated investors without additional benefits. MFA recommends that the "International Dealer Exemption" apply to both registered and exempt firms, similar to the "International Adviser Exemption," thereby permitting non-Canadian hedge fund managers to sell interests in their funds to "permitted clients" (as defined below) without being required to register as a dealer in Canada.

1.2 Permitted Clients

MFA notes that NI 31-103 simplifies the process of privately placing non-Canadian hedge fund interests to a new category of super-accredited investors defined as "permitted clients." MFA supports limiting the class of permitted clients to sophisticated investors. From our experience with the U.S. private placement regime, however, we believe that the financial thresholds under the permitted client definition for natural persons and corporations are too high. MFA encourages the CSA to consider amending the definition of permitted client by reducing the CDN$5 million financial eligibility threshold for natural persons and the CDN$100 million financial eligibility threshold for corporations.

It is widely accepted that sophisticated investors need less regulatory protection than unsophisticated investors. Accordingly, we believe it is appropriate that non-Canadian dealers, advisers and investment fund managers be permitted to engage in activities on a registration-exempt basis with a permitted client. As proposed, the definition of permitted client, excludes many sophisticated investors who do not need, and derive little value from, the protection that registration provides.

The U.S. accredited investor definition used for private placements has proven successful since its inception in 1982. For many years, it has achieved the right balance between promoting capital raising activities and regulation, and distinguishing sophisticated investors from unsophisticated investors. In recognition of the effects of inflation on the thresholds established in 1982 though, MFA supports the SEC in its proposals to raise the accredited investor threshold

to account for inflation. As adjusted for inflation, we believe the financial thresholds set in 1982 are appropriate and effective.

MFA recommends that the CSA define permitted client for a natural person as a person with a net worth of at least CDN$2 million or annual income of at least CDN$400,000 (or annual joint income of at least CDN$600,000).[3] MFA recommends that the CSA define permitted client for a corporation to be a corporation with shareholders' equity of at least CDN$10 million. In addition, we recommend that the CSA make it clear that registration would not be required of a dealer, adviser or investment fund manager with respect to activities related to hedge funds sold solely to "permitted clients." We believe these changes appropriately balance capital raising and investor protection concerns.

1.3 Investment Fund Manager Registration

MFA agrees with the CSA's statement in Companion Policy 31-103CP that if an investment fund manager is located outside of Canada, there should be no requirement for the investment fund manager to be registered in Canada, unless it is directing the management of a fund from inside Canada. This policy will benefit Canadian investors by providing them with greater alternative investment opportunities.

1.4 Transition/Grandfathering

MFA is pleased that the CSA has proposed transition provisions for NI 31-103. The transition provisions will minimize the financial burden on investors and businesses. MFA is concerned, however, that if NI 31-103 amends the financial thresholds for persons eligible to invest in a private fund, then Canadian investors may be redeemed out of their existing non-Canadian hedge fund investments or prevented from making reinvestments or additional investments in the same fund in order to comply with NI 31-103. From a general policy and fairness perspective, MFA recommends that all existing relationships between funds and their investors be grandfathered to avoid the termination of existing permitted relationships, as termination of those relationships could harm investors by creating tax and transaction costs and creating unbalance in investor portfolios by eliminating certain of their existing allocations. In particular, MFA recommends a grandfathering provision which would allow existing Canadian investors in non-Canadian funds to remain in and be allowed to make additional investments in such funds, without application of the financial thresholds for permitted clients proposed in NI 31-103.

1.5 Mutual Recognition

MFA is pleased that "[t]he CSA are supportive of recently announced interest in mutual recognition by the United States Securities and Exchange Commission."[4] Mutual recognition offers many potential benefits for U.S. and Canadian investors, including broader investment

[3] In 2003, we submitted a White Paper (submitted to the CSA along with our comment letter on NI 31-103 dated June 29, 2007) recommending that the SEC raise the financial thresholds under the "accredited investor" definition to amounts similar to those above (in U.S. dollars rather than Canadian dollars). In 2007, in response to two sets of rule proposals from the SEC, we recommended that the SEC adjust for inflation the financial thresholds under the accredited investor standard, to the amounts stated above (in U.S. dollars).

[4] NI 31-103 – *Registration Requirements – Summary of Comments received by June 30, 2007* – Comment No. 11, pp. 16-17.

choices, lower transaction costs, and more access to information about foreign investment opportunities, without sacrificing investor protection.

Canada is an important part of an increasingly international and global market. MFA encourages the CSA to consider mutual recognition of other sophisticated markets and regulators when implementing rules that have a significant impact on international funds, dealers and advisers with respect to sophisticated Canadian investors. MFA supports mutual recognition of regulation in developed markets, especially the U.S., Canada, the United Kingdom and the European Union. MFA believes that there is no need for the CSA to regulate activities that are already subject to a comprehensive regulatory regime in other well-developed capital markets and that the CSA should seek to harmonize or make its rules compatible with the regulatory regimes in those markets.

1.6 Regulation of Futures

MFA encourages the CSA to implement an exempt permitted client regime for futures trading and advising activities in Canada similar to what is being proposed in NI 31-103 for securities activities. MFA submits that the regulatory issues and investor concerns addressed by NI 31-103 are fundamentally the same for futures and securities regulation. MFA understands that there are legislative restrictions on certain of the CSA's areas of jurisdiction under NI 31-103; nonetheless, some provinces have the legislative ability to move in this regulatory direction. MFA submits that this could be a significant addition to NI 31-103 and very helpful to investors and market participants, including funds that use or invest in both securities and futures.

As part of incorporating futures activities into NI 31-103, MFA specifically recommends that the CSA state that the "flow-through" analysis does not apply to futures activities. This is an important issue for MFA members as a number of hedge funds invest in futures or use futures for hedging purposes.

1.7 Capital Market Participation Fees-Unregistered Investment Fund Managers

MFA submits that the capital market participation fees under OSC Rule 13-502, as applicable to unregistered investment fund managers, should be eliminated. The application of this fee is complicated and contrary to basic expectations concerning when fees are payable in foreign markets and thus leads to compliance challenges and unnecessary legal and administrative expenses. MFA submits that this fee should be applicable only to investment fund managers that are required to be registered with Canadian regulatory authorities.

1.8 "National" Registration System

MFA encourages the CSA to implement a "national" system that is effectively streamlined and harmonized – the stated goal of NI 31-103. A national set of rules and a "one-step" registration system would represent a significant improvement in the Canadian securities regulatory system for both domestic and international participants. MFA is concerned that NI 31-103 contemplates and accommodates differences at the provincial and territorial level that will significantly reduce the effectiveness of NI 31-103. MFA encourages the CSA to resolve these differences in the final version of NI 31-103.

CONCLUSION

MFA appreciates the opportunity to comment on the CSA's proposed NI 31-103. We support the CSA's efforts in promoting investor protection and creating a more efficient investment environment in Canada through streamlining, harmonizing and modernizing the Canadian registration regime. We look forward to working with the CSA and would be pleased to meet with the CSA to discuss our comments or the hedge fund industry generally.

Respectfully submitted,

Richard H. Baker
President and CEO