



March 18, 2013

**Via e-mail:** Consultation@cimoney.com.ky

The Managing Director  
Cayman Islands Monetary Authority  
P.O. Box 10052  
80e Shedden Road  
Elizabethan Square  
Grand Cayman KY1-1001  
Cayman Islands

**Re: Cayman Islands Monetary Authority Consultation Paper on Corporate Governance Principles**

Dear Madam:

Managed Funds Association (“MFA”)<sup>1</sup> welcomes the opportunity to provide comments in response to the Cayman Islands Monetary Authority’s (“CIMA”) consultation paper on enhancing the corporate governance regulatory framework (the “Consultation Paper”). We seek to engage constructively with regulators and policy makers with respect to the regulation and oversight of financial markets and the hedge fund industry.

MFA and its members support strong corporate governance and transparency. We generally support the proposed approach taken in the Consultation Paper; however, we have some comments on specific aspects of the proposed regulations. Our comments are provided from the perspective of hedge funds based in the Cayman Islands and subject to registration with CIMA. For the sake of convenience, where relevant, we have included specific questions from the Consultation Paper below with our responses following.

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<sup>1</sup> The Managed Funds Association (MFA) represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organisation established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry’s contributions to the global economy. MFA members help pension plans, university endowments, charitable organisations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, the Americas, Australia and all other regions where MFA members are market participants.

**Question 1: To facilitate the cross-sectoral application of the Statement of Guidance (the “SOG”), the Authority has restricted the corporate governance guidance in the SOG to fundamental principles and requirements. Does the industry find this useful and appropriate or would the industry prefer more detailed guidance?**

We generally support the proposals in the Consultation Paper and we agree with CIMA’s proposed approach of developing principles rather than prescriptive rules for corporate governance.

**Question 2: Does industry approve of the cross-sectoral application of the SOG or would you prefer sector-specific guidance? If you would prefer sector-specific guidance explain the reasons for your preference.**

We believe many of the principles in the SOG likely would be relevant and appropriate across sectors. We also believe, however, that there are differences in business structures and investor expectations with respect to the role of directors. As such, we believe that a one-size-fits-all, cross-sectoral approach may not be the most effective approach to corporate governance regulation.

One important difference in structure is that investment funds such as hedge funds do not have employees, unlike operating companies. Investment funds are simply pools of assets. Investors make decisions about which funds to invest in primarily on the basis of their review and due diligence of the fund’s investment manager. In that regard, investors expect the investment manager to establish strategy and risk parameters for the fund. Investors in funds may look to the directors of the fund to provide oversight and help ensure the investment manager manages the fund’s investment activities in accordance with the governing documents of the fund and the investment management agreement between the manager and the fund. We do not believe, however, that investor look to directors of investment funds, who typically serve in a non-executive capacity, to establish risk or investment parameters on behalf of the fund, those responsibilities lie with the investment manager.

For these reasons, we believe the principles in section 7 regarding the board establishing risk management and strategic objectives generally are not relevant to investment funds. We believe that requiring directors of investment funds to be subject to these principles would create a fundamental change in the expectation that investors, directors, and fund managers have with respect to the role of an investment fund’s directors. Accordingly, we encourage CIMA to revise the SOG to provide that the principles in section 7 do not need to be applied with respect to directors of investment funds.

**Question 3: Do you consider the information proposed to be available on the public database to be relevant and appropriate or would it be beneficial to include further information such as (where applicable) custodian, fund administrator, insurance manager, or auditor?**

We support transparency and generally support a public database with basic information about registrants, including funds. It is important that any public database not include any

proprietary or sensitive business information about funds. Disclosure of such information could cause significant harm to companies by unfairly providing sensitive information that competitors could unfairly take advantage of, to the detriment of the reporting company.

We further believe that CIMA should consider the extent to which information about service providers is material to the public at large before requiring public disclosure. CIMA may wish alternatively to consider private reporting of information to the extent it is useful for regulatory purposes. Material information about investment fund service providers already is provided to investors in the fund's offering documents. As such, it is unclear that there is further value in requiring public disclosure of a fund's service providers.

### **Limitations on the number of directorships**

We agree with the general principle that directors need to devote sufficient time and resources to meet their obligations with respect to any company for which they are a director, consistent with the relevant corporate governance principles in the SOG. We do not believe, however, that CIMA should place numerical limits on the number of directorships a person may hold. We believe that any numerical limit would be an arbitrary determination, particularly given the different expectations for the role of directors at different types of companies. Instead of setting numerical limits, we encourage CIMA to adopt a principles-based approach that a person should only serve as a director of a company to the extent that person has sufficient time and resources to fulfil his or her obligations with respect to all directorships he or she holds.

We would be very happy to discuss our comments or any of the issues raised in the Consultation Paper with CIMA. If CIMA has any comments or questions, please do not hesitate to contact Benjamin Allensworth or the undersigned at 1 (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell

Executive Vice President &  
Managing Director, General Counsel