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VIA EMAIL

Wilbur Welcome
Senior Policy Analyst
Financial Services Secretariat
Ministry of Financial Services
Government Administration Building
133 Elgin Avenue, Box 126
Grand Cayman KY1-9000

**Response to Public Consultation: Beneficial Ownership of Cayman Islands –
Registered Companies dated 25 November 2013**

Dear Mr Welcome,

Managed Funds Association ("MFA")¹ 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, USA, takes a keen interest in all policy issues that may affect hedge fund and managed futures firms in the alternative investment industry. Accordingly, in light of the considerable stake that our members have in the Cayman Islands investment funds industry, we welcome this opportunity to participate in the open public consultation on the beneficial ownership of Cayman Islands registered companies.

We have focused our response on the questions proposed in respect of sections 2 and 3, *i.e.*, legal and beneficial ownership and the central registry of beneficial ownership information. We have not addressed the questions raised in section 5 on bearer shares, as these instruments are not often utilised within our members' structures. Using the same numbering and questions proposed in the consultation paper, our responses are as follows:

- 1. Is the establishment of a central register of the beneficial ownership and control of companies in the Cayman Islands the most appropriate and effective way to ensure transparency?**

¹ MFA is an advocacy, education, and communications organization 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 organizations, 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.

The Financial Action Task Force (“FATF”) recommendations are recognised as the international standards for combating money laundering, terrorism and the financing of crime, and provide the benchmark for desired global transparency. FATF standards not only address the importance of ascertaining clients' identities, but stress the need for identity verification as part of this process. Any central register would therefore need to address both aspects. Notably the FATF recommendations do not suggest centralised or public registers as an effective tool to monitor client identity data.

Whilst MFA is supportive of the need for continued improvement in global transparency, we have concerns that there is an ever-increasing compliance burden for US managers operating Cayman Islands funds which is becoming prohibitive to business. US managers will already need to enhance their due diligence and client on-boarding processes, above those applicable to US domiciled funds, in response to the introduction of the U.S. Foreign Account Tax Compliance Act (“FATCA”) to the Cayman Islands later this year. In our view, a beneficial ownership register would be another significant compliance burden, which may be even more difficult for certain managers to implement than the FATCA, and which goes above and beyond the FATF recommendations.

Our members have supported the Cayman Islands for many decades on the basis that it provides a flexible and commercial operating environment, with appropriate levels of regulation and transparency. Many of our members are managing hedge funds which are registered with the Cayman Islands Monetary Authority (“CIMA”), and such funds are already required to comply with the Cayman Islands Money Laundering Regulations and CIMA's recently released Statement of Guidance for Regulated Mutual Funds – Corporate Governance, the later specifying best practice in relation to the supervision by operators of funds of any service providers where anti-money laundering and know-your-customer functions are delegated.

Accordingly, for the most part, Cayman funds managed by our members are already required to maintain extensive know-your-customer information and expend substantial amounts of capital every year to engage professional administrators who review the identity of fund investors. To extend these obligations even further is unnecessary and may not be in the best interests of the Cayman Islands in terms of maintaining its competitiveness in the longer term.

Specific potential issues that we think need to be addressed are as follows:

- a central register that requires a company to self-report details of beneficial ownership (which appears to be the proposed UK model) may detract from the current system, whereby administrators and other equivalent corporate services providers engage trained professional staff to collate and review client identification information. Unless a central register performed the same level of information verification, using appropriately qualified staff, the new system is unlikely to be as robust as continuing with the private sector arrangements currently in place.

- we query the value of a central register where the requisite information is already being held by administrators (who are themselves often subject to regulation) and other corporate services providers who are properly licensed and regulated. Centralising a very large existing body of data, that is already accessible to governments and regulators in appropriate circumstances, would not appear to enhance transparency to any material degree.
- the cost of introducing a central register, and appropriately staffing it, will presumably be fairly significant. Our members would not welcome additional increases in Cayman Islands government fees to finance this exercise.
- other mainstream jurisdictions may chose not to introduce a central register for various reasons, which would lead to inconsistent requirements across jurisdictions.

2. Is there a need for enhancement of the current system, by which the information is already held by licensed service providers and made accessible to appropriate authorities? If so, how?

Whilst we agree that all systems need to be regularly reviewed and, where necessary, refined to ensure that they remain current and appropriate, the introduction of the FATCA will require many firms in the Cayman Islands financial services industry to review their existing client identity information and, where necessary, update it, thereby enhancing the current system.

Many of our members already engage professional administrators, which are required to be overseen and regularly reviewed by the relevant fund's board of directors, to assist with their client verification practices and the existing legislation imposed upon our members (as outlined in our response to Question 1) means that extensive know-your-customer information should already be held on file for such fund vehicles that are operated by our members – more so than may perhaps be the case for smaller, privately held Cayman companies.

We note that the Cayman Islands already requires a significant amount of due diligence information to establish a vehicle, exceeding the level required in the US. Increasing the information that firms are required to provide would cause unnecessary regulatory burdens for firms operating in the alternative fund space or considering Cayman vehicles, and may result in members diverting to alternative jurisdictions that operate a simpler process.

For these reasons, we would not support the proposed central registry for hedge funds. If the Cayman Islands nevertheless determines to adopt a central registry, our responses below provide our additional views regarding the operation of such a central registry with respect to hedge funds.

3. What are your views on the FATF definition of beneficial ownership and its application in respect of information to be held by a central registry?

Adopting the current FATF definition would significantly increase the amount of investor identification that US managers are required to gather on Cayman Islands funds, over and above their US equivalents. In some instances, it may be impossible to gather this information in complex commercial structures (for example, funds of funds) in order to drill down to a 'natural person', particularly where indirect ownership considerations are introduced. We believe this could result in significant confusion and legal uncertainty for firms seeking to provide appropriate information. The FATF definition has several limbs, introducing the potential for confusion and misinterpretation, so a more simplified definition would be helpful – Please see our response to Question 6 below.

4. If pursued, what types of companies and legal entities should be in the scope of the registry? What do you expect to happen if, as suggested by some parties, these registries are limited to companies and exclude other entities like trusts?

As described in our responses to Questions 1 and 2, we would not support a central registry. If the Cayman Islands adopts a central registry, it would seem sensible that all (subject to our response to Question 9) legal entities that are currently required to utilise a corporate services provider should be within scope. The obvious assumption is that if certain vehicles are out of scope, these vehicles could be used by firms seeking to not report information, thereby defeating the purpose of the central registry.

5. Should there be exemptions for certain types of company? If so, which?

This is not really relevant for hedge funds, which primarily utilise exempted companies in investment structures. If the central register is pursued, exempted companies would presumably need to be in scope if a central registry is to have any meaningful role.

6. Should companies be required to identify the beneficial ownership of blocks of shares representing more than 10% of the voting rights or shares in the company? Or should companies be required, in any other way, to identify the beneficial owner who has equivalent control over the company?

A fixed percentage threshold is a more simple and effective means of identifying which beneficial owners should be subject to identification verification, although we query whether a 10% threshold is an appropriate level or whether a higher threshold would be more practicable – beneficial owners need to be easy to categorise in the same way as a legal owners currently are, so definitive rules are helpful. It can be difficult to assess 'control' where companies issue classes of shares with partial voting rights, so any rules would need to reflect the full complexity of modern structures and beneficial ownership arrangements whilst also being easily interpreted.

7. Should beneficial owners be required to disclose their beneficial ownership of the company to the company?

Provided a simplified definition of 'beneficial ownership' is introduced, so that a person would be aware that a disclosure requirement had been triggered, we agree that this seems

sensible in cases of direct beneficial ownership. Any attempts to require extensive layers of beneficial ownership to be revealed should be avoided, as this may discourage nominee investors which are important and utilised in structures operated by a number of our members.

8. Are there other requirements that the Cayman Islands could apply to continue to ensure that information on all companies' beneficial ownership is obtained and improve the availability of such information? If so, what?

As outlined in our responses to Questions 1 and 2 above, hedge fund structures are already subject to regulation and oversight in the Cayman Islands and are required to collate and maintain levels of client data which, in some cases, exceeds the data required in other jurisdictions. The introduction of FATCA, global co-operation of regulators, CIMA's new statement of guidance and the operation of the many Tax Information Exchange Agreements that the Cayman Islands has adopted, means that the Cayman Islands is already aligned to global standards on information exchange for legal and fiscal purposes.

9. Should trustee(s) of express trusts be disclosed as the beneficial owner of a company?

Trust structures are not particularly relevant to hedge funds. We understand that there are complex legal issues surrounding the identification of beneficiaries in certain trust structures which makes it impractical to identify every beneficiary. There is also a greater expectation of privacy in family private trust arrangements, which suggests that any trust arrangements should certainly be excluded from any public database (see Question 16).

10. Is it appropriate for the beneficiary or beneficiaries of the trust to be disclosed as the beneficial owner as well? Under what circumstances?

See answer to Question 9.

11. Should the same requirements regarding a company's legal owners be applied as the model for beneficial ownership information to be provided to the Registrar of Companies ("ROC")?

Yes, this seems sensible, assuming beneficial ownership registers are introduced in due course.

12. If not, what other information might be required?

Not applicable.

13. Should companies be required to update beneficial ownership information at fixed intervals, or as the information changes?

Due to the nature of the vehicles operated by our members, it would be impractical to expect beneficial ownership details to be updated as the information changes. Many funds have multiple changes in ownership every month, and the filing burden would be

extensive. If a filing requirement is introduced, our preference would be that information should be collated and filed based upon a single snap shot in time, preferably no more than annually.

14. Should beneficial owners be required to disclose changes in beneficial ownership information proactively to the company?

In a hedge fund context, beneficial ownership information is usually collated by the administrator when an investor subscribes to the fund and investors are contractually obliged to notify the fund of any changes in that information. However, we foresee considerable practical difficulties in requiring beneficial owners to disclose such changes to the company and in many cases the information may not be easily obtainable or capable of being provided in a timely manner. One example would be in the cases of funds of funds operating on selling platforms.

15. What are appropriate timeframes for notification of changes to the company or ROC?

We would suggest that this be in line with existing Cayman legislation relating to the change of legal ownership.

16. Should information in a registry (if such were to be created) be made available publicly? Please explain your answer.

In our view public disclosure is undesirable and, in many instances, may be detrimental to transparency and deter investors from using Cayman vehicles. Whilst there is a recognised need for governments to have access to certain information in order to effectively collect tax revenues and enforce laws, there is no similar justification for allowing general public access to information that, to date, has been protected by a reasonable expectation of investor privacy. This concept also does not align with the extensive data protection laws which operate globally, and which have been developed to protect individuals from unscrupulous and intrusive examination of their personal wealth and affairs.

We are concerned that public access to such information could create the potential for misuse with limited, if any, benefit to regulators. A publicly available registry of beneficial ownership information could be used by companies or individuals in a manner that would not further the policy objectives of the consultation. In some cases, public disclosure of beneficial ownership information could be misleading if it provided an incomplete or confusing impression regarding the ownership of a particular vehicle. Furthermore, for a variety of competitive and other reasons, hedge fund investors expect that their ownership positions will be kept confidential by a manager and not publicly disclosed. We therefore believe public disclosure is not necessary to achieve the objectives of the consultation to increase transparency, and that the current system is preferable.

- 17. If yes to the previous question, should a framework of exemptions from a public record be put in place? If yes, which categories of beneficial owners might be included? How might this framework operate?**

Not applicable.

- 18. Should any beneficial ownership information held by the company be made publicly available? How?**

No, for the reasons outlined in Question 16.

- 19. Should any framework of exemptions in relation to information held by the registry also apply to information held by the company?**

If exemptions are introduced, then this seems sensible.

- 20. What are your opinions on the costs and benefits of this change for companies, beneficial owners, regulated entities, DNFPBs and other organisations?**

Our members are not in favour of these proposals as they reflect a further layer of cost and compliance in an industry which is already struggling with the burden of significant additional regulation. Effective systems are already in place, as previously mentioned, to ensure the collation and exchange of information between governments to allow proper fiscal and regulatory oversight. We think it unlikely that a central registry would add any material improvement over and above the existing system and could deter investors from committing capital to Cayman vehicles.

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Thank you for allowing MFA to participate in this consultation process and we hope our views are helpful for this purpose. If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact Matthew Newell, Associate General Counsel, or the undersigned at (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

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