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

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Outsourcing Workgroup
(Attention: Banking Department II)
Monetary Authority of Singapore
10 Shenton Way, MAS Building
Singapore 079117

Consultations: Notice on Outsourcing and Guidelines on Outsourcing

Dear Sir or Madam,

This is with reference to the consultation papers issued on 5 September 2014 by the Monetary Authority of Singapore ("**MAS**") entitled "*Notice on Outsourcing*" ("**Consultation on Notice**") and "*Guidelines on Outsourcing*" ("**Consultation on Guidelines**") (together, the "**Consultations**"). Managed Funds Association ("**MFA**") [1] appreciates the opportunity to provide comments to the MAS regarding its proposals to amend the Guidelines on Outsourcing ("**Guidelines**"). MFA is an association representing the global alternative investment industry, and we have considered the issues raised by the Consultations from the perspective of our hedge fund members with operations in Singapore. For the reasons described below, we respectfully recommend that the MAS consider modifying its proposals in the case of a Singapore-based investment advisory firm that relies on an overseas regulated financial institution ("**overseas FI**") that is an affiliate of the investment advisory firm to perform certain business activities.

Consultation on Notice

In particular, we note the following proposed new requirements introduced under the Consultation on Notice:

(i) for an institution to ensure that independent audits and/or expert assessments of all its material outsourcing arrangements are conducted once every three years;

(ii) where the service provider is an overseas FI, for an institution to provide a written confirmation by the supervisory authority of the service provider to the effect that:

[1] 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 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.

(a) the MAS and any independent auditors appointed by it will be allowed access to the institution's documents, records of transactions etc. stored or processed by the service provider, and that the institution and any auditor appointed by it may inspect the service provider's control environment, insofar as it relates to the institution's data processed by the service provider, and may report any findings to the MAS;

(b) in the case where the supervisory authority is a host supervisor, it shall not access any customer information of the institution that is in possession of the overseas FI and in the case where it is the home supervisor, it shall not access such information unless required solely for the purpose of carrying out its supervisory functions (a prior written notification must be provided to the MAS for such access); and

(c) the supervisory authority is prohibited under its laws from disclosing the information to any other person, or it undertakes to safeguard the confidentiality of the information,

(together, the "**Independent Audit and Overseas Supervisory Authority Confirmation Requirements**"). We assume that the intention of the Overseas Supervisory Authority Confirmation Requirement is for the MAS and its agent to have right of access to the Singapore licensed entity's records and customer information stored by the overseas FI, but not for access to the overseas FI's records or information of non-Singapore customers.

Overview of Common Hedge Fund Structures

Although MFA's members may be headquartered in the US, Europe or Asia, we wish to address a common corporate structure featuring a US entity and a Singapore affiliate entity. For example, in such a structure, typically, a US incorporated investment adviser (the "**US Adviser**") directly or indirectly holds all, or substantially all, of the equity interest in a Singapore entity (as a subsidiary)[2], which acts as a sub-adviser to the US Adviser (the "**Singapore Sub-Adviser**"). The US Adviser is registered with the US Securities and Exchange Commission ("**SEC**") under the US Investment Advisers Act of 1940, and the Singapore Sub-Adviser is typically registered or licensed with the MAS.

The US Adviser is the principal investment adviser to a hedge fund (*e.g.*, established in the Cayman Islands) under an investment advisory agreement, and the Singapore Sub-Adviser is appointed by the US Adviser either to: (i) trade the fund's assets on a discretionary basis; or (ii) provide investment advice to the US Adviser (which retains the discretion on whether or not to act on that advice). The Singapore Sub-Adviser typically engages in limited business activities solely on behalf of a single affiliated client, *i.e.*, the parent US Adviser. As a result, the Singapore Sub-Adviser typically does not have any unaffiliated clients.

Generally speaking, the business activities of the Singapore Sub-Adviser may overlap with its affiliated entities, creating redundancies within the broader group of its affiliated entities. These affiliated entities may comprise of the US Adviser and potentially other affiliated sub-advisers. Under such a structure, the Singapore Sub-Adviser does not operate independently, but rather

[2] This is only an example of one possible typical structure, there could be other ownership permutations for an overseas affiliate entity holding, directly or indirectly, the shareholding of the Singapore affiliate entity.

incorporates the systems and processes of the US Adviser into its own activities. For reasons of efficiency and to ensure consistency across entities, typical business functions, such as risk management of the Singapore Sub-Adviser, are outsourced by the Singapore Sub-Adviser and performed by the US Adviser. Typically, this outsourcing arrangement is evidenced through a formal agreement between the Singapore Sub-Adviser and the US Adviser. The Guidelines currently provide that such agreements contain a clause permitting the MAS or its agents access to certain records maintained by the parties, so as to enable the MAS to carry out all of its supervisory functions.

Application of the Proposed New Requirements

The proposals in the Consultations would apply to the common hedge fund structure as described above by requiring: (i) the Singapore Sub-Adviser to ensure that independent audits and/or expert assessments of all its material outsourcing arrangements with the US Adviser are conducted once every three years; and (ii) where the service provider is an overseas FI, such as a US Adviser registered with the SEC, the Singapore Sub-Adviser to provide certain written confirmations to the MAS by the supervisory authority of the service provider (*e.g.*, the SEC).

Recommendations

Respectfully, we are of the view that these requirements may not be necessary or appropriate for the typical hedge fund structure, where the Singapore Sub-Adviser outsources certain business functions to its parent US Adviser. As described above, the Singapore Sub-Adviser generally has only one client, which is the US Adviser and does not provide services to third party "customers" as such. In this structure, all "customer information" that is in possession of the Singapore Sub-Adviser originates from the US Adviser. Thus, any processing or handling of "customer information" by the US Adviser due to any outsourcing to the US Adviser is merely involving information that the US Adviser would already have.

This structure is distinguishable from other types of third-party outsourcing relationships in which an institution engages directly with customers and relies on an unaffiliated third-party to perform certain business functions. The additional protections proposed in the Consultations are, in our view, not needed in the context of a Singapore Sub-Adviser outsourcing certain business functions to its parent US Adviser, which in turn controls the Singapore Sub-Adviser. Because the Singapore Sub-Adviser provides services directly to the US Adviser, and not to third party customers, there is little, if any, risk that the outsourcing arrangement could impact the type of customers or investors which we believe the proposals are intended to protect.

In addition, the proposals would create legal uncertainty and impose new burdens and costs on US Advisers that have established a local presence in Singapore, in the form of Singapore Sub-Advisers. With regard to the Independent Audit Requirement, we note that, under the Guidelines, the Singapore Sub-Adviser is already required to conduct an annual review of its outsourcing relationships to ensure they are appropriate and in compliance with all applicable rules. We believe the current requirement has functioned well in the hedge fund industry, and we are concerned that the proposed requirement would lead to additional costs and potential confusion regarding the scope of the audit.

With regard to the Overseas Supervisory Authority Confirmation Requirement, it is not clear to us how each US Adviser would obtain such required written confirmations from the SEC. The SEC typically does not provide such assurances to US investors, and it would likely view such a request as unusual and outside the normal scope of its activities. The SEC would not be under any obligation to the US Adviser to provide such written confirmations. We are concerned that even with the best efforts of the US Adviser, the SEC may decline to do so (such as due to being unable to limit its activities in the manner described in the proposed certifications) or take a long time to consider the request and possibly negotiate the terms of the confirmation (which the SEC is entitled to do so as the SEC is not subject to any timeline to respond to such requests). In the worst-case scenario, this could result in the Singapore Sub-Adviser not being able to commence operations, or to suspend operations whilst waiting for the SEC to respond, and if the SEC declines to give the confirmation, the Singapore Sub-Adviser could be forced to turn to an unregulated entity to provide the outsourced functions, which is not ideal and would lead to increased costs and decreased efficiencies.

Generally speaking, the SEC enters into agreements with foreign regulators that facilitate the exchange of information between agencies and address other types of inter-governmental issues. We note that in May 2000, the SEC and the MAS jointly agreed to a Memorandum of Understanding, "*Concerning Consultation and Cooperation and the Exchange of Information*" ("**MOU**").[3] We would encourage the MAS and the SEC to address any additional information needed from regulated entities through the types of information exchanges addressed in the MOU.

For these reasons, we recommend that the MAS consider amending the proposals to provide for an exemption from the **Independent Audit and Overseas Supervisory Authority Confirmation Requirements** for outsourcing to affiliated entities such as "related corporations" as defined under the Companies Act, Chapter 50 of Singapore. Such exemption for related corporations could include specific conditions so it would apply to affiliated relationships of the type described above, which would include situations where an outsourcing relationship is established between a US Adviser and a Singapore Sub-Adviser where the US Adviser performs business activities for the Singapore Sub-Adviser, and which is established by a formal agreement evidencing such outsourcing and provides for access of information to be given to the MAS, so as to not impede the MAS in carrying out its supervisory functions. We believe such an approach would better achieve the objectives of the MAS in ensuring appropriate oversight of the Singapore Sub-adviser, while avoiding the considerable legal and practical difficulties described above.

Alternatively, if the MAS determines not to provide a related corporation exemption, we recommend that the MAS consider introducing an exemption that provides that, in the case of a service provider that is an overseas FI, an institution would not need to provide the MAS with a written confirmation by the supervisory authority of the service provider, where the service provider is registered with a supervisory authority that has a memorandum of understanding in relation to the exchange of information with the MAS.

[3] The MOU is available at: https://www.sec.gov/about/offices/oia/oia_bilateral/singapore.pdf.

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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 1 (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

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