

**Notice of Multilateral Policy 31-202 *Registration Requirement for
Investment Fund Managers***
and
Amendments to Companion Policy 31-103CP
***Registration Requirements, Exemptions and Ongoing Registrant
Obligations***

Registration Requirement for Investment Fund Managers

July 5, 2012

1. Introduction

The following jurisdictions (the MP 31-202 jurisdictions) are implementing Multilateral Policy 31-202 *Registration Requirement for Investment Fund Managers* (MP 31-202):

British Columbia
Alberta
Saskatchewan
Manitoba
Prince Edward Island
Nova Scotia
New Brunswick
Northwest Territories
Yukon
Nunavut

2. Substance and Purpose

MP 31-202 provides guidance about the general principles that apply to determining whether a person is required to register as an investment fund manager in the MP 31-202 jurisdictions, including guidance on the types of activities that investment fund managers typically conduct. The MP 31-202 jurisdictions expect MP 31-202 to become effective September 28, 2012.

Securities legislation provides that unless registered, a person must not act as an investment fund manager. The legislation defines an “investment fund manager” as a person that directs or manages the business, operations or affairs of an investment fund. Accordingly, an investment fund manager would only be required to register in a jurisdiction if it directs or manages the business, operations or affairs of the investment fund in that jurisdiction. We interpret directing or managing the business, operations or affairs of an investment fund to encompass oversight and direction of the fund, which establish a real and substantial connection to the jurisdiction. This does not require the

investment fund manager to be physically present in the jurisdiction. It does require the activities to take place in the jurisdiction.

In determining if registration is required, the person should consider what activities are taking place in these jurisdictions, including those functions and activities listed in MP 31-202. We would not expect that any single function or activity would be determinative. Specifically, functions or activities tied to presence of security holders, solicitation of investors or distribution of securities in a jurisdiction are not activities that give rise to investment fund manager registration, unless they are directed from within the jurisdiction and result in the person directing or managing the business operations or affairs of an investment fund in the jurisdiction.

The securities regulators in Ontario, Quebec and Newfoundland and Labrador are implementing a different multilateral instrument and multilateral companion policy, relating to the investment fund manager registration requirement in those jurisdictions. The interpretation of the investment fund manager registration requirement in these jurisdictions is significantly different than in the MP 31-202 jurisdictions.

All CSA jurisdictions are implementing the same minor consequential amendments to Companion Policy 31-103CP (NI 31-103CP) effective September 28, 2012.

3. Contents of this Notice

This notice contains the following annexes:

- Annex A – Multilateral Policy 31-202 *Registration Requirement for Investment Fund Managers*
- Annex B – Amendments to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*
- Annex C – Summary of Comments and Responses to the Proposed Multilateral Policy 31-202 *Registration Requirement for Investment Fund Managers* and to Amendments to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

4. Background

October 2010 Proposal

On October 15, 2010, the CSA published a proposal for comment setting out the circumstances in which non-resident investment fund managers would need to register in a jurisdiction (the October 2010 Proposal). In response to the comments received on the October 2010 Proposal, and after further consideration by the CSA we are not proceeding with the amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) and its companion policy that were set out in the October 2010 Proposal.

February 2012 Proposal

On February 10, 2012 certain securities regulators in the MP 31-202 jurisdictions published MP 31-202 for comment (the February 2012 Proposal). The MP 31-202 jurisdictions are proceeding to adopt MP 31-202, with only a few minor amendments.

5. Summary of comments received by the MP 31-202 jurisdictions

We received 14 comment letters on the February 2012 Proposal. The comments were extremely helpful in finalizing MP 31-202. Copies of the comment letters are available on the British Columbia Securities Commission website: www.bsc.bc.ca.

A list of the commenters and a summary of the comments, together with our responses, is contained in Annex C to this notice.

6. Summary of key changes to MP 31-202

In response to comments received, we clarify in MP 31-202 that functions or activities tied to the presence of security holders, solicitation of investors or the distribution of securities in a jurisdiction will not give rise to investment fund manager registration, unless they are directed from within the jurisdiction and result in the person directing or managing the business operations or affairs of an investment fund in the jurisdiction.

7. Transition

The transition provisions in sections 16.5 and 16.6 of NI 31-103, which exempt certain investment fund managers from the registration requirement, expire on September 28, 2012. MP 31-202 will be effective on that date. However, all CSA members are issuing parallel exemption orders so that investment fund managers affected by the change will not need to register by September 28, 2012; they must apply for registration by December 31, 2012.

8. Questions

Please refer your questions to any of the following CSA staff:

Lindy Bremner
Senior Legal Counsel, Capital Markets Regulation
British Columbia Securities Commission
Tel: 604-899-6678
Fax: 1-800-373-6393
lbremner@bcsc.bc.ca

Navdeep Gill
Manager, Registration
Alberta Securities Commission
Tel: 403-355-9043
navdeep.gill@asc.ca

Dean Murrison
Deputy Director, Legal and Registration
Saskatchewan Financial Services Commission
Tel: 306-787-5879
dean.murrison@gov.sk.ca

Chris Besko
Legal Counsel, Deputy Director
The Manitoba Securities Commission
Tel. 204-945-2561
Toll Free (Manitoba only) 1-800-655-5244
chris.besko@gov.mb.ca

Katharine Tummon
Superintendent of Securities
Prince Edward Island Securities Office
Tel: 902-368-4542
kptummon@gov.pe.ca

Brian W. Murphy
Deputy Director, Capital Markets
Nova Scotia Securities Commission
Tel: 902-424-4592
murphybw@gov.ns.ca

Ella-Jane Loomis
Legal Counsel
New Brunswick Securities Commission
Tel: 506-643-7857
ella-jane.loomis@nbsc-cvmnb.ca

Donn MacDougall
Deputy Superintendent, Legal & Enforcement
Office of the Superintendent of Securities
Government of the Northwest Territories
Tel: 867-920-8984
donald_macdougall@gov.nt.ca

Helena Hrubesova
Securities Officer
Securities Office, Corporate Affairs (C-6)
Government of Yukon
Tel: 867-667-5466
helena.hrubesova@gov.yk.ca

Louis Arki, Director, Legal Registries
Department of Justice, Government of Nunavut
Tel: 867-975-6587
larki@gov.nu.ca

ANNEX A**MULTILATERAL POLICY 31-202
REGISTRATION REQUIREMENT FOR INVESTMENT FUND MANAGERS**

This Policy applies in British Columbia, Alberta, Saskatchewan, Manitoba, Prince Edward Island, Nova Scotia, New Brunswick, Northwest Territories, Yukon and Nunavut.

An investment fund manager directs or manages the business, operations or affairs of an investment fund. It is required to register in a jurisdiction if it carries on the activities of an investment fund manager in that jurisdiction.

Some of the functions and activities that an investment fund manager directs, manages or performs include:

- establishing a distribution channel for the fund
- marketing the fund
- establishing and overseeing the fund's compliance and risk management programs
- overseeing the day to day administration of the fund
- retaining and liaising with the portfolio manager, the custodian, the dealers and other service providers of the fund
- overseeing advisers' compliance with investment objectives and overall performance of the fund
- preparing the fund's prospectus or other offering documents
- preparation and delivery of security holder reports
- identifying, addressing and disclosing conflicts of interest
- calculating the net asset value (NAV) and the NAV per share or unit
- calculating, confirming and arranging payment of subscriptions, redemptions and arranging for the payment of dividends or other distributions, if required

An investment fund manager is required to register if it directs or manages the business, operations or affairs of an investment fund from a physical place of business in a jurisdiction or its head office is in a jurisdiction.

In circumstances where the investment fund manager does not have a physical place of business or head office in a jurisdiction, they will need to register if they engage in the activities that result in their directing or managing the business, operations or affairs of an investment fund in that jurisdiction. In determining if registration is required, these entities should consider what activities they are directing from within the jurisdiction, including those functions and activities listed above. As registration is only required if the person is conducting investment fund manager activities in a jurisdiction that result in them directing or managing the business, operations or affairs of an investment fund in

that jurisdiction, we would not expect that any single function or activity would be determinative. Specifically, functions or activities tied to the presence of security holders, solicitation of investors or the distribution of securities in a jurisdiction are not activities that would give rise to investment fund manager registration, unless they are directed from within the jurisdiction and result in the person directing or managing the business, operations or affairs of an investment fund in the jurisdiction.

ANNEX B**AMENDMENTS TO COMPANION POLICY 31-103CP
REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING
REGISTRANT OBLIGATIONS**

Section 7.3 [Investment fund manager category] is amended by adding the following new paragraph after the first paragraph under the heading “7.3 Investment fund manager category”:

“For additional guidance on the investment fund manager registration requirement in Alberta, British Columbia, Manitoba, Nova Scotia, New Brunswick, Northwest Territories, Nunavut, Prince Edward Island, Saskatchewan and Yukon see Multilateral Policy 31-202 *Registration Requirement for Investment Fund Managers* and in Newfoundland and Labrador, Ontario and Québec see Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers* and Companion Policy 32-102CP *Registration Exemptions for Non-Resident Investment Fund Managers*”

ANNEX C**SUMMARY OF COMMENTS AND RESPONSES TO THE
PROPOSED MULTILATERAL POLICY 31-202
REGISTRATION REQUIREMENT FOR INVESTMENT FUND MANAGERS****AND TO****AMENDMENTS TO COMPANION POLICY 31-103CP REGISTRATION
REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS****Introduction**

We received 14 comment letters on the February 2012 Proposal. This appendix consolidates and summarizes the material comments and our responses by theme.

Comments outside the scope of the February 2012 Proposal

We have not provided responses to the comments we received that asked questions or sought advice on how the policy would operate in the commenter's specific fact situation or that were outside the scope of the February 2012 Proposal, including comments relating to:

- exemptions for entities that manage specific types of investment funds; and
- the Supreme Court of Canada reference concerning a proposed Canadian Securities Act.

1. Registration Requirement

Commenters expressed strong support for the February 2012 Proposal and our interpretation of the investment fund manager registration requirement, which requires a person to register as an investment fund manager in a jurisdiction if it directs or manages the business, operations or affairs of an investment fund in that jurisdiction. Commenters generally agreed that in determining whether registration is required, regulators should look at the functions and activities of the person that are taking place in that jurisdiction and that the presence or solicitation of investors in a jurisdiction should not automatically require an investment fund manager to register in that jurisdiction.

Commenters supported our interpretation of the investment fund manager registration requirement because it:

- is supported by legislation and regulatory policy
- is tied appropriately to statutory authority

One commenter noted that the formulation of the investment fund manager registration requirement under securities legislation suggests that there must be an element of mind

and management undertaken in the jurisdiction and our approach appropriately reflects this concept.

Commenters also noted that our approach balances the competing mandates of investor protection with the promotion of fair and efficient capital markets by taking a reasonable approach that is less complicated and easier to comply with than the approach of the securities regulators in Ontario, Quebec and Newfoundland and Labrador.

One commenter noted that our policy is consistent with the abandonment by the CSA of the “look through” interpretative principle.

Commenters supported our decision not to proceed with the October 2010 Proposal.

Commenters oppose the approach of the securities regulators in Ontario, Quebec and Newfoundland and Labrador under which a person must register in multiple jurisdictions if either the investment fund or the investment fund manager distributes securities in the jurisdiction. Commenters took the position that all CSA jurisdictions should adopt MP 31-202.

We thank commenters for the strong support.

2. Harmonization

Commenters were disappointed that the CSA issued two incompatible and inconsistent proposals and did not issue harmonized requirements and guidance with respect to the investment fund manager registration requirement. Commenters urged the CSA to reach a compromise and issue a uniform approach. Commenters urged all securities regulators to adopt MP 31-202.

Commenter noted that differences in interpreting legislation should occur only if there is a substantive and compelling basis for the distinction. They said that in this context there is no rationale for jurisdictions to apply different legal conclusions to the same legislative requirements. Further, in this case, all CSA jurisdictions have essentially the same registration requirement for investment fund managers and accordingly we are not simply imposing different rules, we are interpreting the same rules in a widely differing manner.

Commenters noted that the two differing proposals are contrary to the general goal of harmonization, as well as the specific goal of NI 31-103 which is to harmonize, streamline and modernize registration requirements in Canada. Further, it is discouraging that the CSA is not in this context demonstrating the high degree of regulatory cooperation that already exists.

We agree that to the extent possible we should harmonize securities laws and policies across Canada. That different interpretations of the investment fund manager registration requirement could create uncertainty and confusion. We agree that legislative provisions underlying the investment fund manager registration requirement in all CSA jurisdictions is essentially the same. CSA jurisdictions tried to reach a consensus on the interpretation

of the investment fund manager registration requirement, but were unable to agree. In general, commenters supported MP 31-202.

Commenters raised numerous specific concerns with the lack of harmonization, including:

- regulatory fragmentation and confusion in the investment fund market place
- bifurcation of rules among jurisdictions leading to confusion and uncertainty for non-resident investment fund managers
- inconsistent compliance as a result of uncertainty and confusion about the differing requirements
- differing regimes hurting Canada's international reputation as a jurisdiction for business
- a non-unified approach making access to Canadian capital markets more difficult and expensive with little or no benefit to registrants or the investing public
- differing legal requirements making it more complicated and prohibitive to enter the Canadian market
- the proposals limiting investment choices in Canada

We think that our approach is the correct legal interpretation of the investment fund manager registration requirement. The comments support this assertion. An investment fund manager is only required to register in an MP 31-202 jurisdiction if they are directing or managing the business, operations or affairs of an investment fund from within a jurisdiction. This should not negatively impact access to our markets or limit the investment offerings in the MP 31-202 jurisdictions. We do not expect that foreign funds will cease offerings in the MP 31-202 jurisdictions or redeem securities held by residents in these jurisdictions. Further, based on our interpretation of the registration requirement, entities required to register will have a real and substantial connection to the jurisdiction, warranting the compliance costs associated with such registration.

Commenters encouraged the CSA to enhance cooperation through administrative interdelegation designed to ensure appropriate oversight of investment fund manager activities regardless of the location of its head office, place of business, the funds it manages or the investors in these funds.

Despite the differing interpretations of the investment fund manager registration requirement, we expect that the CSA will continue to cooperate with respect to the oversight of registrants requiring registration in more than one jurisdiction.

3. Functions and Activities

The MP 31-202 lists a number of functions and activities that we think investment fund managers' typically direct, manage or perform. If a person is directing these activities from within a jurisdiction it is an indication that the fund is directed or managed in the jurisdiction, which requires the investment fund manager to register in the jurisdiction.

Commenters agreed that it is appropriate to consider the functions and activities carried out in the jurisdiction to determine whether registration in the jurisdiction is required. However, a number of commenters expressed concerns that the interpretation of our registration requirement may be broader than we intended, based on certain of the indicia listed in MP 31-202 as functions and activities that an investment fund manager directs, manages or performs.

In general, we are not intending to require an investment fund manager to register in our jurisdictions based on the mere presence of security holders, solicitation of investors or the distribution of securities in our jurisdiction. The MP 31-202 jurisdictions think that the delivery of security holder reports, payments of redemptions or dividends, marketing of a fund or distributing securities of a fund to residents in a jurisdiction are activities tied to the presence of security holders, solicitation of investors or distribution of securities in that jurisdiction. These activities would not ordinarily indicate that a person is directing or managing the business operations of affairs of an investment fund in a jurisdiction. The solicitation, marketing and distribution of securities in a jurisdiction may give rise to dealer registration, but in our view do not give rise to investment fund manager registration.

If the investment fund manager is directing the carrying out of the functions or activities set out in the MP 31-202 from an MP 31-202 jurisdiction, including on a national or international basis, it is an indication that they may be directing or managing an investment fund from a jurisdiction. In all cases, the person must assess whether or not the activities they are carrying out in a jurisdiction amount to them directing or managing the business operations or affairs of an investment fund in a jurisdiction.

We revised the guidance in the MP 31-202 to clarify these matters.

Distribution and marketing

With respect to “establishing a distribution channel for the fund” and “marketing the fund”, commenters noted:

- Establishing a distribution channel for the fund and marketing the fund are functions and activities undertaken by investment fund managers in the jurisdiction of the investors, and these activities alone do not constitute a sufficient connection to warrant triggering the investment fund manager registration requirement.
- Distribution and marketing activities trigger the dealer registration requirement.
- Marketing a fund is not tantamount to directing or managing the business, operations or affairs of an investment fund.

- Marketing a fund has generally been associated with the distribution of a fund, distribution requires registration as a dealer and should not also require investment fund manager registration.
- Marketing a fund should not be a consideration in determining whether a person is acting as an investment fund manager.
- If distribution and marketing functions trigger the investment fund manager registration requirement (which does not contain an “in the business” threshold), then all non-domestic dealers distributing and marketing investment fund products in Canada would trigger the investment fund manager registration requirement.
- Wholesaling or marketing a fund in a particular jurisdiction or advertising a fund to the general public should not be a factor to consider in determining whether investment fund manager registration is required.
- Registration should not be required where the person arranges for the listing of the investment funds they manage on a distributor’s recommended list in a jurisdiction.

We agree that the distribution and marketing of a fund to residents in a jurisdiction are not activities that on their own would usually require an investment fund manager to register. Distributing and marketing activities generally require dealer registration. Investment fund manager registration would be required if the person is setting up, making decisions or otherwise directing the funds distribution channels or marketing from a jurisdiction because these are functions and activities that indicate the person may be directing or managing the fund from the jurisdiction.

Delivery of reports and payments from or to security holders

One commenter noted that in the context of reporting issuers, securities legislation recognizes that the delivery of security holder reports and the payment of subscriptions, redemptions and dividends by non-Canadian issuers to Canadian residents do not alone trigger the application of the securities legislation applicable to reporting issuers. This legislation implicitly recognizes that these activities do not occur in the jurisdiction in which the investors of the issuer reside. This concept should apply in the same manner for investment funds.

Another commenter stated that the “delivery” of reports, in the sense that reports are mailed from one province (generally the head office location) to a unitholder resident in another province should not require registration as an investment fund manager in the province where the unitholder resides. They said we should recognize compiling and delivering of the reports takes place from the head office location. The receipt of reports in a particular province should not be determinative of the question of whether investment fund manager activity is taking place in that province.

Another commenter sought clarity that MP 31-202 does not suggest that the delivery of security holder reports or the payment of dividends, distributions or redemptions in a jurisdiction was activity that required registration in a jurisdiction.

We agree that the delivery of security holder reports and the payment of subscriptions, redemptions and dividends from or to residents in a jurisdiction are not activities that indicate the person is directing or managing the investment fund from within the jurisdiction. The jurisdiction in which the investment fund manager is directing the production and delivery of the reports and payment of subscriptions, redemptions and dividends from is the jurisdiction it is carrying out investment fund manager activities in, indicating it may be directing or managing the investment fund from within that jurisdiction. We recognize that generally reports are compiled and delivered from the head office jurisdiction. The direction of this activity in the investment fund manager's head office jurisdiction supports the conclusion that the investment fund is being directed or managed from that jurisdiction.

Service providers

A number of commenters asked for guidance about whether a non-resident investment fund manager that outsources certain functions and activities listed in the MP 31-202 to a service provider in a jurisdiction would itself trigger registration in that jurisdiction. Commenters noted that simply retaining and liaising with service providers and portfolio managers of the funds who are located in a particular province should not require investment fund manager registration in that jurisdiction. They noted that actual oversight is conducted from the investment fund managers' head office location and not in the province where the service provider or portfolio manager is located, although meetings may take place in the service providers or portfolio managers' province, as part of the due diligence and oversight regime carried out by the investment fund manager.

We agree that retaining a portfolio manager or other service provider in a jurisdiction does not itself result in the investment fund manager directing or managing the business, operations or affairs of an investment fund in the jurisdiction where the portfolio manager or service provider is located. Investment fund managers only need to consider the activities they are carrying out in the jurisdiction, not the activities carried out by service providers.

In the Notice accompanying the February 2012 Proposal, we stated "if an entity delegates or outsources activities to a service provider to such a level that the service provider is directing or managing the business, operations or affairs of an investment fund in the jurisdiction, then the service provider must also register as an investment fund manager". One commenter expressed concern that this statement indicates that in certain circumstances two entities may require investment fund manager registration. We expect use of the word "also" in this statement may have caused some confusion. Under securities legislation, only persons that are directing or managing the business operations or affairs of an investment fund in a jurisdiction are required to register. The person only needs to consider the activities they are conducting in the jurisdiction in determining whether they are directing or managing the investment fund in a particular jurisdiction.

However, as we note in section 7.3 of NI 31-103 CP it is possible for an investment fund to have more than one investment fund manager. We also note that a service provider, who is directing or managing the business operations or affairs of an investment fund in a jurisdiction, must register.

One commenter noted that the investment fund manager registration requirement is not consistent with the structuring of fund vehicles outside of Canada, including limited partnerships administered by corporate general partners, limited liability companies, corporate vehicles and other special types of collective investment schemes. They note that many of these vehicles have boards of directors or equivalent governance bodies such that the fund vehicle itself or the individual members of its governing body might technically be "a person or company that directs the business, operations or affairs of an investment fund" and therefore be subject to the investment fund manager registration requirement.

As we confirm in section 7.3 of NI 31-103CP, some investment fund complexes or groups may have more than one entity that is subject to investment fund manager registration. However, under our interpretation of the investment fund manager registration requirement, an entity will only need to register in our jurisdictions if the activities they are conducting in our jurisdictions amount to the directing or managing of the fund from our jurisdictions. Further, since boards or equivalent governance bodies ordinarily conduct their activities through the entities they govern, in ordinary circumstances, this should not give rise to a registration requirement for these governing bodies.

Level of activity

One commenter suggested that we should adopt an approach that requires investment fund manager registration only when the performance of a significant portion, a principle portion of a few or an auxiliary portion of many of the investment fund manager functions or activities listed in the MP 31-202 takes place in a jurisdiction.

We do not agree. A person must register as an investment fund manager if the person is directing or managing the business operations or affairs of an investment fund in the jurisdiction. It is a factual determination whether the activities and functions taking place in the jurisdiction result in the person directing or managing the fund from the jurisdiction. The proportion of activities carried out in a jurisdiction does not directly relate to the registration requirement, although the level of activity will likely be a factor in determining whether the person is directing or managing the fund from the jurisdiction. As we confirm in the MP 31-202 we would not expect that any single function or activity would be determinative.

Head office

Commenters generally supported the requirement to register where a person directs or manages the business, operations or affairs of an investment fund from a physical place of business in a jurisdiction or has its head office in a jurisdiction. One commenter

suggested we focus registration on the jurisdiction or jurisdictions in which the directing of the business, operations or affairs of the investment fund is actually taking place. The commenter also acknowledged that registration in both the jurisdiction where the head office is located and the jurisdiction or jurisdictions in which the functions and activities are taking place may facilitate our compliance and enforcement functions.

We think that an investment fund manager will usually be directing or managing the business, operations or affairs of the investment funds they manage from the jurisdiction in which their head office is located. They may also be carrying out functions or activities in other jurisdictions, which may give rise to registration.

List of commenters

- Alternative Investment Management Association
- Alix d'Anglejan-Chatillon, Kenneth G. Ottenbreit and Kathleen G. Ward of Stikeman Elliott LLP
- Borden Ladner Gervais LLP (Investment Management practice group)
- Franklin Templeton Investments Corp.
- GreyStone Managed Investments Inc.
- IGM Financial Inc.
- Invesco Trimark Ltd.
- Manulife Mutual Funds
- Nexus Investment Management Inc.
- Orbis Investment Management Limited
- Portfolio Management Association of Canada
- RESP Dealers Association of Canada
- Ross McKee of Blake, Cassels & Graydon LLP
- The Investment Adviser Association
- The Investment Funds Institute of Canada (received June 22, 2012)