

Request for Comment

MULTILATERAL INSTRUMENT 32-102 REGISTRATION EXEMPTIONS FOR NON-RESIDENT INVESTMENT FUND MANAGERS

COMPANION POLICY 32-102CP REGISTRATION EXEMPTIONS FOR NON-RESIDENT INVESTMENT FUND MANAGERS

February 10, 2012

Introduction

Context

The Ontario Securities Commission, the Autorité des marchés financiers, the New Brunswick Securities Commission and the Financial Services Regulation Division, Service NL, Government of Newfoundland and Labrador (collectively, we) are publishing for a 60 day comment period proposed Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers* (the Multilateral Instrument or MI 32-102) and Companion Policy 32-102CP *Registration Exemptions for Non-Resident Investment Fund Managers* (the Companion Policy or 32-102CP).

The Multilateral Instrument and the Companion Policy would apply in Ontario, Québec, New Brunswick and Newfoundland and Labrador (collectively, the jurisdictions) and relate to proposed registration exemptions for investment fund managers

- that do not have their head office or their principal place of business in a jurisdiction of Canada (international investment fund managers); and
- that do not have a place of business in the local jurisdiction (domestic non-resident investment fund managers).

We refer to international and domestic non-resident investment fund managers, collectively, as non-resident investment fund managers.

Temporary exemptions from investment fund manager registration

National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) currently provides temporary exemptions until September 28, 2012 for non-resident investment fund manager registration. The jurisdictions propose to adopt new temporary exemptions, which would cease to have effect on December 31, 2012.

Implementation of the Multilateral Instrument and Companion Policy

The text of the Multilateral Instrument and of the Companion Policy is contained in Annexes A and B of this notice and will also be available on the Ontario Securities Commission website at www.osc.gov.on.ca and on the Autorité des marchés financiers website at www.lautorite.qc.ca.

Substance and Purpose

The Multilateral Instrument would exempt non-resident investment fund managers from the requirement to register in the jurisdictions in circumstances where there are no significant connecting factors to the local jurisdiction.

The distribution of investment fund securities in the local jurisdiction is, in our view, a significant connecting factor to that jurisdiction. A non-resident investment fund manager triggers the registration requirement if either the investment fund or the investment fund manager distributes or has distributed investment fund securities in the jurisdiction.

If an investment fund has security holders in the local jurisdiction, this gives rise to investment fund management activities in that jurisdiction, including activities reflecting the relationship between the fund, the investment fund manager (who is responsible for directing those activities), and the security holders. Such activities include the delivery of financial statements and other periodic reporting, calculating net asset values and fulfilling redemption and dividend payment obligations.

Certain risks associated with those activities give rise to investor protection concerns, in the same manner as domestic investment fund managers with a place of business in the local jurisdiction.

Background

On October 15, 2010, the Canadian Securities Administrators (the CSA) published for comment proposed amendments to NI 31-103 and to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (31-103CP) related to the registration requirement for non-resident investment fund managers (the CSA October 2010 Proposal).

The CSA October 2010 Proposal provided that non-resident investment fund managers would be required to register in a CSA jurisdiction if the investment fund has security holders resident in that jurisdiction, and the investment fund manager or the investment fund actively solicited the purchase of the fund's securities by residents in that jurisdiction. The CSA October 2010 Proposal also provided for certain exemptions from the requirement to register as an investment fund manager.

The comment period for the CSA October 2010 Proposal ended on January 13, 2011. The CSA received 24 comment letters on the CSA October 2010 Proposal. Copies of the comment letters are posted on the Ontario Securities Commission website at www.osc.gov.on.ca

and on the Autorité des marchés financiers website at www.lautorite.qc.ca. Annex C of this notice provides a summary of these comments and our responses.

Summary of the Proposed Instrument

Exemption from the investment fund manager registration requirement based on the absence of security holders or active solicitation

MI 32-102 provides an exemption from the requirement to register as an investment fund manager in circumstances where there are no security holders of the investment fund, or active solicitation of residents, in the local jurisdiction. In those circumstances, we take the view that registration is not necessary to ensure investor protection. We propose guidance in the Companion Policy on what would and would not be considered active solicitation.

Exemption from the investment fund manager registration requirement based on a distribution only to permitted clients

Under the CSA October 2010 Proposal, an international investment fund manager, without a place of business in Canada, would have had an exemption from the investment fund manager registration requirement if the Canadian distribution of the fund's securities was restricted to permitted clients. Threshold limitations on fund assets attributable to Canadian investors were also proposed as a condition for this exemption. In view of the comments received, we are again proposing this exemption but without the threshold limitations.

Notices to securities regulatory authority when relying on the permitted client exemption

We propose to include a requirement to notify the securities regulatory authority of the reliance on this exemption, including disclosure of the assets under management attributable to investors in the local jurisdiction. This would provide the regulator with information for monitoring purposes. We also propose to include a requirement to file with the securities regulatory authority a notice of regulatory action.

Notice to permitted clients

We propose to include a requirement to notify the permitted client of the fact that the investment fund manager is not registered in the local jurisdiction together with certain prescribed disclosure. We do not expect international investment fund managers to notify the existing permitted clients who have invested in the fund at the time of coming into force of MI 32-102. Rather, the international investment fund manager will be required to provide this notice prior to any new permitted client making an investment after the coming into force of MI 32-102.

Notice to investors by international investment fund managers

Section 5 of MI 32-102 would require that an international investment fund manager give notice to investors which includes, in substance, the disclosure required pursuant to section 14.5 of NI 31-103. This requirement would come into effect on March 31, 2013.

Transition

We propose to adopt new temporary exemptions from registration for non-resident investment fund managers, which would be in effect until December 31, 2012. These investment fund managers would have until the end of this new transition period to apply for registration.

Consequential Amendment to 31-103CP

Annex D to this Notice outlines a proposed consequential amendment to section 7.3 of 31-103CP. The purpose of this amendment is to provide references to applicable guidance on the registration requirement for non-resident investment fund managers. Each CSA member is proposing this amendment to 31-103CP.

Anticipated Costs and Benefits

The proposed Multilateral Instrument and Companion Policy provide clarity and guidance to the industry relating to the registration requirement for non-resident investment fund managers and strike an appropriate balance between providing an efficient system of registration and protecting investors.

Alternatives Considered

No alternatives to the Multilateral Instrument were considered.

Request for Comments

We welcome your comments on proposed 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*.

Please submit your comments in writing on or before April 10, 2012. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format). Address your submission **only** to the following CSA members, as follows:

Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Financial Services Regulation Division, Service NL, Government of Newfoundland and Labrador

Please deliver your comments **only** to the addresses below:

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
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jstevenson@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax : 514-864-6381
consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

Contents of this Notice

This notice gives an overview of the proposed 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*, and contains the following annexes:

- Annex A – Proposed Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers*
- Annex B – Proposed Companion Policy 32-102CP *Registration Exemptions for Non-Resident Investment Fund Managers*
- Annex C – Summary of comments and responses of the Ontario Securities Commission, the Autorité des marchés financiers, the New Brunswick Securities Commission and the Financial Services Regulation Division, Service NL, Government of Newfoundland and Labrador, to the CSA October 2010 Proposal
- Annex D – Proposed amendment to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

Questions

Please refer your questions to any of the following:

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Annex A

MULTILATERAL INSTRUMENT 32-102 REGISTRATION EXEMPTIONS FOR NON-RESIDENT INVESTMENT FUND MANAGERS

Part 1 Definitions and application

Definitions

1. In this Instrument, “permitted client” has the same meaning as in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, except that it excludes paragraph (m) and (n) and includes a registered charity under the *Income Tax Act* (Canada) that obtains advice on the securities to be traded from an eligibility adviser, as defined in section 1.1 of NI 45-106 *Prospectus and Registration Exemptions*, or an adviser registered under the securities legislation of the jurisdiction of the registered charity.

Application of this Instrument

2. This Instrument applies in Ontario, Québec, New Brunswick and Newfoundland and Labrador.

Part 2 Exemptions from investment fund manager registration

No security holders or active solicitation in the local jurisdiction

3. The investment fund manager registration requirement does not apply to a person or company acting as an investment fund manager of an investment fund if it does not have a place of business in the local jurisdiction and if one or more of the following apply:

- (a) the investment fund has no security holders resident in the local jurisdiction;
- (b) the investment fund or the investment fund manager has not actively solicited residents in the local jurisdiction to purchase securities of the fund.

Permitted clients

4. (1) The investment fund manager registration requirement does not apply to a person or company acting as an investment fund manager of an investment fund if all securities of the investment fund distributed in the local jurisdiction were distributed under an exemption from the prospectus requirement to a permitted client.

- (2) The exemption in subsection (1) is not available unless all of the following apply:
 - (a) the investment fund manager does not have its head office or its principal

place of business in Canada;

(b) the investment fund manager is incorporated, formed or created under the laws of a foreign jurisdiction;

(c) the investment fund is not a reporting issuer in any jurisdiction of Canada;

(d) the investment fund manager has submitted to the securities regulatory authority in the local jurisdiction a completed Form 32-102F1 *Submission to Jurisdiction and Appointment of Agent for Service for International Investment Fund Manager*;

(e) the investment fund manager has notified the permitted client in writing of all of the following:

(i) the investment fund manager is not registered in the local jurisdiction to act as an investment fund manager;

(ii) the foreign jurisdiction in which the head office or principal place of business of the investment fund manager is located;

(iii) all or substantially all of the assets of the investment fund manager may be situated outside of Canada;

(iv) there may be difficulty enforcing legal rights against the investment fund manager because of the above;

(v) the name and address of the agent for service of process of the investment fund manager in the local jurisdiction.

(3) A person or company that relied on the exemption in subsection (1) during the 12 month period preceding December 1 of a year must notify the securities regulatory authority in the local jurisdiction, by December 1 of that year, of the following:

(a) the fact that it relied upon the exemption in subsection (1);

(b) for all investment funds for which it acts as an investment fund manager, the total assets under management expressed in Canadian dollars, attributable to securities beneficially owned by residents of the local jurisdiction as at the most recently completed month.

(4) A person or company relying on the exemption in subsection (1) must file with the securities regulatory authority in the local jurisdiction, a completed Form 32-102F2 *Notice of Regulatory Action* within 10 days of the date on which that person or company began relying on that exemption.

(5) A person or company must notify the securities regulatory authority in the local jurisdiction, of any change to the information previously submitted in Form 32-102F2 *Notice of Regulatory Action* under subsection (4) within 10 days of the change.

Part 3 Notice to investors by international investment fund managers

Contents of the notice

5. A registered investment fund manager whose head office or principal place of business is not located in Canada must provide or cause to be provided, to security holders with an address of record in the local jurisdiction on the records of each investment fund in respect of which the investment fund manager acts as an investment fund manager, a statement in writing disclosing the following:

- (a) the investment fund manager is not resident in the local jurisdiction;
- (b) the foreign jurisdiction in which the head office or the principal place of business of the investment fund manager is located;
- (c) all or substantially all of the assets of the investment fund manager may be situated outside of Canada;
- (d) there may be difficulty enforcing legal rights against the investment fund manager because of the above;
- (e) the name and address of the agent for service of process of the investment fund manager in the local jurisdiction.

Part 4 Transition

Temporary exemption for Canadian investment fund manager registered in its principal jurisdiction

6. A person or company that is registered as an investment fund manager in the jurisdiction of Canada in which its head office is located is not required to register or apply for registration in the local jurisdiction as an investment fund manager until December 31, 2012.

Temporary exemption for international investment fund managers

7. A person or company that is acting as an investment fund manager in the local jurisdiction and whose head office or principal place of business is not in a jurisdiction of Canada is not required to register or apply for registration in the local jurisdiction as an investment fund manager until December 31, 2012.

Part 5 Granting an exemption

Who can grant an exemption

8. (1) The regulator, except in Québec, or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the jurisdiction.

Part 6 When this Instrument comes into force

Effective date

9. (1) Except as set out in subsection (2), this Instrument comes into force on *[insert date of coming into force]*.

(2) Section 5 comes into force on March 31, 2013.

**FORM 32-102F1 SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT
FOR SERVICE FOR
INTERNATIONAL INVESTMENT FUND MANAGER**

(section 4 [permitted clients])

1. Name of person or company (“International Firm”):
2. If the International Firm was previously assigned an NRD number as a registered investment fund manager or an unregistered exempt international firm, provide the NRD number of the firm.
3. Jurisdiction of incorporation of the International Firm:
4. Address of head office or principal place of business of the International Firm:
5. The name, e-mail address, phone number and fax number of the International Firm’s chief compliance officer.

Name:
E-mail address:
Phone:
Fax:
6. Name of agent for service of process (the "Agent for Service"):
7. Address for service of process on the Agent for Service:
8. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.
9. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.
10. Until 6 years after the International Firm ceases to rely on section 4 *[permitted clients]*, the International Firm must submit to the securities regulatory authority

- a. a new *Submission to Jurisdiction and Appointment of Agent for Service for International Investment Fund Manager* in this form no later than the 30th day before the date this *Submission to Jurisdiction and Appointment of Agent for Service for International Investment Fund Manager* is terminated; and
 - b. an amended *Submission to Jurisdiction and Appointment of Agent for Service for International Investment Fund Manager* no later than the 30th day before any change in the name or above address of the Agent for Service.
12. This *Submission to Jurisdiction and Appointment of Agent for Service for International Investment Fund Manager* is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

(Signature of the International Firm or authorized signatory)

(Name and Title of authorized signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of (Insert name of International Firm) under the terms and conditions of the foregoing *Submission to Jurisdiction and Appointment of Agent for Service for International Investment Fund Manager*.

Dated: _____

(Signature of Agent for Service or authorized signatory)

(Name and Title of authorized signatory)

FORM 32-102F2 NOTICE OF REGULATORY ACTION

(section 4 [permitted clients])

Definitions

Significant control – a person or company has significant control of another person or company if the person or company:

- directly or indirectly holds voting securities representing more than 20 per cent of the outstanding voting rights attached to all outstanding voting securities of the other person or company, or
- directly or indirectly is able to elect or appoint a majority of the directors (or individuals performing similar functions or occupying similar positions) of the other person or company.

Specified affiliate – a person or company that is a parent of a firm, a specified subsidiary of a firm, or a specified subsidiary of a firm’s parent.

Specified subsidiary – a person or company of which another person or company has significant control.

All of the questions below apply to any jurisdiction and any foreign jurisdiction. The information must be provided in respect of the last 7 years.

1. Has the firm, or any predecessors or specified affiliates of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, self-regulatory organization (SRO) or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

Yes _____ No _____

If yes, provide the following information for each settlement agreement:

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

2. Has any financial services regulator, securities or derivatives exchange, SRO or similar organization:

	Yes	No
(a) Determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?		
(b) Determined that the firm, or any predecessors or specified affiliates of the firm made a false statement or omission?		
(c) Issued a warning or requested an undertaking by the firm, or any predecessors or specified affiliates of the firm?		
(d) Suspended or terminated any registration, licensing or membership of the firm, or any predecessors or specified affiliates of the firm?		
(e) Imposed terms or conditions on any registration or membership of the firm, or predecessors or specified affiliates of the firm?		
(f) Conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?		
(g) Issued an order (other than an exemption order) or a sanction to the firm, or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g. cease trade order)?		

If yes, provide the following information for each action:

Name of Entity	
Type of Action	
Regulator/organization	
Date of action (yyyy/mm/dd)	Reason for action
Jurisdiction	

3. Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliates is the subject?

Yes _____ No _____

If yes, provide the following information for each investigation:

Name of entity
Reason or purpose of investigation
Regulator/organization
Date investigation commenced (yyyy/mm/dd)
Jurisdiction
Name of firm
Name of firm's authorized signing officer or partner
Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

Witness

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness
Title of witness
Signature
Date (yyyy/mm/dd)

Annex B

COMPANION POLICY 32-102CP REGISTRATION EXEMPTIONS FOR NON-RESIDENT INVESTMENT FUND MANAGERS

Part 1 Fundamental concepts

Introduction

Purpose of this Companion Policy

This Companion Policy sets out how the Ontario Securities Commission, the Autorité des marchés financiers, the New Brunswick Securities Commission and the Financial Services Regulation Division, Service NL, Government of Newfoundland and Labrador (collectively, we) interpret or apply the provisions of Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Managers* (MI 32-102) and related securities legislation.

MI 32-102 applies in Ontario, Québec, New Brunswick and Newfoundland and Labrador.

Numbering system

Except for Part 1, the numbering of Parts and sections in this Companion Policy correspond to the numbering in MI 32-102. Any general guidance for a Part appears immediately after the name of the Part. Any specific guidance on sections in MI 32-102 follows any general guidance. If there is no guidance for a Part or section, the numbering in this Companion Policy will skip to the next provision that does have guidance.

All references in this Companion Policy to sections and Parts are to MI 32-102, unless otherwise noted.

Definitions

Unless defined in MI 32-102, terms used in MI 32-102 and in this Companion Policy have the meaning given to them in the securities legislation of each jurisdiction or in National Instrument 14-101 *Definitions*.

In this Companion Policy “regulator” means the regulator or securities regulatory authority in a jurisdiction.

This guidance applies to investment fund managers

- that do not have their head office or their principal place of business in a jurisdiction of Canada (international investment fund managers); and

- that are domestic investment fund managers which do not have a place of business in the local jurisdiction (domestic non-resident investment fund managers).

We refer to international and domestic non-resident investment fund managers, collectively, as non-resident investment fund managers.

Requirement to register as an investment fund manager

An investment fund manager is required to register if it directs or manages the business, operations or affairs of an investment fund. 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) of the fund and the NAV per share or unit
- calculating, confirming and arranging payment of subscriptions and redemptions, and arranging for the payment of dividends or other distributions, if required

Where to register as an investment fund manager

(a) Investment fund managers with a place of business in the local jurisdiction

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

(b) Non-resident investment fund managers

A non-resident investment fund manager triggers the registration requirement if either the investment fund or the investment fund manager distributes or has distributed investment fund securities in the local jurisdiction. If an investment fund has security holders in the local jurisdiction, this gives rise to investment fund management activities in such jurisdiction, including activities reflecting the relationship between the fund, the investment fund manager (who is responsible for directing those activities), and the security holders. Such activities include the delivery of financial statements and other periodic reporting, calculating net asset values and fulfilling redemption and dividend payment obligations.

Part 2 Exemptions from investment fund manager registration

3. No security holders or active solicitation

Conditions of the exemption

An investment fund manager that does not have a place of business in the local jurisdiction is exempt from the investment fund manager registration requirement if there are no security holders of the fund resident in that jurisdiction or there is no active solicitation by the investment fund manager or the investment fund in that jurisdiction.

Active solicitation

One of the conditions of this exemption is that the investment fund manager or the investment fund has not actively solicited the purchase of the fund's securities by residents in the local jurisdiction. Active solicitation refers to intentional actions taken by the investment fund or the investment fund manager to encourage a purchase of the fund's securities, such as pro-active, targeted actions or communications that are initiated by an investment fund manager for the purpose of soliciting an investment.

Actions that are undertaken by an investment fund manager at the request of, or in response to, an existing or prospective investor who initiates contact with the investment fund manager would not constitute active solicitation.

Examples of active solicitation include:

- direct communication with residents of the local jurisdiction to encourage their purchases of the investment fund's securities
- advertising in Canadian or international publications or media (including the Internet), if the advertising is intended to encourage the purchase of the investment fund's securities by residents of the local jurisdiction (either directly from the fund or in the secondary/resale market)
- purchase recommendations being made by a third party to residents of the local

jurisdiction, if that party is entitled to be compensated by the investment fund or the investment fund manager, for the recommendation itself, or for a subsequent purchase of fund securities by residents of the local jurisdiction in response to the recommendation.

Active solicitation would not include:

- advertising in Canadian or international publications or media (including the Internet) only to promote the image or general perception of an investment fund
- responding to unsolicited enquiries from prospective investors in the local jurisdiction
- the solicitation of a prospective investor that is only temporarily in the local jurisdiction, such as in the case where a resident from another jurisdiction is vacationing in the local jurisdiction.

4. Permitted clients

An investment fund manager that does not have its head office or its principal place of business in Canada is exempt from the investment fund manager registration requirement if the investment fund only distributes its securities in the local jurisdiction to permitted clients and certain other conditions set out in subsection 4(2) are satisfied.

If an investment fund manager is relying on the exemption, it must provide an initial notice by filing a Form 32-102F1 *Submission to Jurisdiction and Appointment of Agent for Service for International Investment Fund Manager* (Form 32-102F1) with the regulator in the local jurisdiction. If there is any change to the information in the investment fund manager's Form 32-102F1, the investment fund manager must update it by filing a replacement Form 32-102F1 with the regulator in the local jurisdiction. So long as the investment fund manager continues to rely on the exemption, it must file an annual notice with the regulator in the local jurisdiction. Subsection 4(3) does not prescribe a form of annual notice. An e-mail or letter will therefore be acceptable.

Annex C

**SUMMARY OF COMMENTS AND RESPONSES OF
THE ONTARIO SECURITIES COMMISSION,
THE AUTORITÉ DES MARCHÉS FINANCIERS,
THE NEW BRUNSWICK SECURITIES COMMISSION AND
THE FINANCIAL SERVICES REGULATION DIVISION, SERVICE NL,
GOVERNMENT OF NEWFOUNDLAND AND LABRADOR**

**TO THE AMENDMENTS PROPOSED BY THE CSA ON OCTOBER 15, 2010 TO
NATIONAL INSTRUMENT 31-103
*REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT
OBLIGATIONS***

**COMPANION POLICY 31-103CP *REGISTRATION REQUIREMENTS, EXEMPTIONS
AND ONGOING REGISTRANT OBLIGATIONS***

Introduction

The Canadian Securities Administrators (the CSA) received 24 comment letters on the proposed amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) and Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (Companion Policy). The amendments relate to the registration requirement for

- international investment fund managers that do not have their head office or principal place of business in a jurisdiction of Canada; and
- domestic investment fund managers that do not have a place of business in the local jurisdiction.

(collectively, non-resident investment fund managers).

The amendments were published for comment on October 15, 2010 (the CSA October 2010 Proposal).

This document summarizes the written public comments received on the CSA October 2010 Proposal. This annex consolidates and summarizes the material comments and the responses of the Ontario Securities Commission, the Autorité des marchés financiers, the New Brunswick Securities Commission and the Financial Services Regulation Division, Service NL, Government of Newfoundland and Labrador (collectively, we or the jurisdictions). The responses are provided by theme.

Drafting suggestions

We received some drafting comments on the proposed amendments. While the proposed Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers* (the Multilateral Instrument or MI 32-102) and Companion Policy 32-102CP *Registration Exemptions for Non-Resident Investment Fund Managers* (32-102CP) incorporate some of the suggestions, this document does not include a summary of any drafting changes.

Comments outside the scope of the CSA October 2010 Proposal

We have not provided responses to the comments we received that are fact specific or outside the scope of the CSA October 2010 Proposal, including:

- registration fees
- national regulator
- redundancy of the investment fund manager registration requirement
- revisiting the definition of permitted client in section 1.1 of NI 31-103
- exemptions for federally regulated financial institutions in CSA jurisdictions other than Ontario.

Responses to comments received

1. Registration Requirement

Jurisdictional authority

Many commenters suggested that an entity should only be required to register in those jurisdictions where it carries out some investment fund manager activities.

Also, some commenters did not agree that the ownership of securities of an investment fund, by a resident in the local jurisdiction should require investment fund manager registration, since this is not considered consistent with the statutory formulation of the investment fund manager registration requirement.

A number of commenters suggested that the CSA's proposed interpretation of the investment fund manager registration requirement was too broad and that the CSA should adopt a more narrow interpretation.

We are of the view that the distribution of the fund's securities in the local jurisdiction is a sufficient connecting factor to that jurisdiction.

Some commenters are of the view that the CSA October 2010 Proposal expands the meaning of "acting as an investment fund manager" by mixing in concepts related to distribution of and trading in securities, which they consider inappropriate given that distribution and trading are

concepts that apply to dealers and not to the functions of an investment fund manager. The jurisdictions do not agree.

We are of the view that although we have dealer registration and prospectus requirements, these requirements do not provide the same ongoing protections or address the same risks that the proposed amendments to the investment fund manager registration requirements aim to achieve.

Investment fund manager registration does not reduce the risks to investors

Some commenters have indicated that the registration requirements in the CSA October 2010 Proposal do not reduce the risks to investors associated with investment in an investment fund that would justify the additional financial and administrative burdens.

The jurisdictions do not agree. The investment fund manager category of registration is designed to address the ongoing operational risks of managing a fund.

In order to be registered, an investment fund manager will be required to meet certain criteria, and once registered, will have to comply with various regulatory requirements, including capital, insurance, financial reporting and proficiency requirements. Registered investment fund managers will also be subject to ongoing obligations to establish and maintain internal controls and risk management systems. These requirements aim to ensure that the investment fund manager has adequate resources and systems in place to carry out its functions.

Investment fund manager registration in multiple jurisdictions of Canada

Some commenters suggest that requiring an entity to register as an investment fund manager in multiple jurisdictions of Canada does not enhance regulatory oversight and investor protection. These commenters are of the view that registration in multiple jurisdictions is not without additional cost and administrative burdens, which will put additional strain on the financial and time resources of an investment fund manager.

The jurisdictions do not agree. The approach proposed by the jurisdictions is consistent with the registration of dealers and advisers in each jurisdiction where they trade securities or act as an adviser.

“Look through” and “flow through”

Several commenters are of the view that the requirement for a Canadian investment fund manager to register in multiple jurisdictions contradicts the CSA’s position that it will not “look through” an investment fund. These commenters have expressed that the investment fund manager registration requirement should not be based on the residency of investors of an investment fund.

We do not agree. There is no “flow-through” concept being applied either in the CSA October 2010 Proposal or in the proposed Multilateral Instrument.

2. Exemptions from the investment fund manager registration requirement

Threshold limitations in the international investment fund manager exemption

Many commenters raised concerns that the threshold limitations proposed in the exemptions from the investment fund manager registration requirement available to international investment fund managers (international investment fund manager exemption) were too restrictive and meaningless. This is because the proposed \$50 million threshold is too low, and many international investment fund managers would not be able to rely on the exemption and would need to register.

Other commenters have expressed that low threshold limitations may require an international investment fund manager to register as a result of market conditions or transactions in fund securities unrelated to subscriptions by Canadian investors, such as periodic redemptions by non-Canadian investors.

Some commenters have also raised concerns that the proposed threshold limitations may inadvertently create barriers for investments by permitted clients in non-Canadian investment funds. This is because the threshold limitation tests create costly monitoring issues. International investment fund managers will have to implement mechanisms to determine, at any time, whether a portion of the fair value of any of the funds structure is attributable to securities beneficially owned by residents of Canada. As a result, an international investment fund manager may be less likely to offer investment fund securities in Canada.

Certain commenters also suggest that the asset threshold limitations should not apply to an international investment fund manager that distributes the securities of its investment funds only to permitted clients. The comments suggest that permitted clients have less need for the investor protection that comes from the oversight of international investment fund managers as these are highly sophisticated clients who have resources to perform their own due diligence and continue to assess the ongoing services of the investment fund manager.

The jurisdictions agree that the proposed threshold limitations in the international investment fund manager exemption were too restrictive and we are not proposing them in the Multilateral Instrument. This means that an international investment fund manager would no longer be required to monitor the assets of the fund attributable to residents of Canada in order to rely on the exemption.

Inconsistent with the international dealer and international adviser exemptions

Some commenters are of the view that the CSA October 2010 Proposal is inconsistent with the other exemptions in NI 31-103 available to international dealers and advisers. This is because reliance on the international investment fund manager exemption requires that the investment fund manager monitor the value of the securities beneficially owned by Canadian investors, whereas other exemptions for international dealers and advisers focus on the type of security and type of client.

We have not included threshold limitations in the international investment fund manager exemption in the proposed Multilateral Instrument.

International investment fund manager exemption - Investment funds formed or created in a foreign jurisdiction

Some commenters suggested that the condition requiring an investment fund be formed or created in a foreign jurisdiction in the international investment fund manager exemption is not relevant. The jurisdictions agree and that condition does not form part of the exemption in the proposed Multilateral Instrument.

Investment fund managers regulated in their home jurisdiction

Some commenters are of the view that the CSA should tailor the regulatory framework with respect to investment fund managers that are also registered or regulated by their home jurisdiction or with their local regulator, or create a new exempt category of registration requiring mandatory disclosure.

We do not agree. Given the different regulatory approaches for investment fund regulation in foreign jurisdictions, we are not proposing that regulation in the home jurisdiction should be a condition to the international investment fund manager exemption. We will consider applications, on a case-by-case basis, from the investment fund manager registration requirement where an international investment fund manager cannot avail itself of an exemption.

Active solicitation

Some commenters have indicated that the “active solicitation” test relates to the distribution of securities, not to “acting as an investment fund manager”.

The criteria for “active solicitation” define an active step taken in the local jurisdiction. It is not a test for distribution. We use the concept of “active solicitation” to determine whether or not the fund or the investment fund manager has activities in the local market.

Some commenters are concerned that responding to unsolicited or administrative queries from current or prospective investors may be considered “active solicitation” and require registration.

We would not consider responding to inquires of an administrative nature as “active solicitation”. We have included guidance in 32-102CP to clarify what we mean by active solicitation.

3. Regulatory burden

Limited investment opportunities for Canadian investors

Several commenters are of the view that the increased regulatory burden of an international investment fund manager having to register in Canada is not justified. These commenters have suggested that the increased regulatory burden may deter the presence of international investment funds in Canada, and reduce investment choices and opportunities for Canadian investors.

The investment fund manager category of registration is designed to address risks to investors

associated with their investment in an investment fund by imposing regulatory requirements, including capital, insurance, financial reporting and proficiency which aims to ensure that the investment fund manager has adequate resources to carry out its functions. We are of the view that where an investment fund manager has an appropriate connection to a jurisdiction, investors should receive protection from these risks. This approach strikes an appropriate balance between providing an efficient system of registration and protecting investors.

Proficiency and other registration requirements

Some commenters are of the view that international investment fund managers will not be able to satisfy the registration requirements under the CSA October 2010 Proposal including those relating to compliance, capital, insurance, financial reporting and proficiency requirements particularly because some requirements are unique to Canada.

We do not agree. There are currently many foreign entities registered in other categories of registration that are subject to the registration requirements of NI 31-103, including the proficiency requirements. We will, however, consider applications for exemptive relief from certain registration requirements for international investment fund managers on a case-by-case basis, where appropriate.

Financial reporting

Some commenters are of the view that complying with the financial statement reporting obligations, particularly the requirement to prepare financial statements in accordance with Canadian GAAP is burdensome for international investment fund managers. We do not agree. Section 3.15 of National Instrument 52-107 - *Accounting Principles and Auditing Standards* recognizes acceptable accounting principles other than Canadian GAAP for foreign registrants.

4. Other comments

Notice of non-resident status of domestic investment fund managers

Several commenters are of the view that it is unnecessary for a non-resident investment fund manager to provide notice of its non-resident status to its clients in each jurisdiction. The notice requirement we propose would apply only to investment fund managers whose head office or principal place of business is outside Canada.

Outsourcing

One commenter suggests that the non-resident registration requirement, for an investment fund manager that outsources or delegates its investment fund manager activities to a service provider in a jurisdiction other than where it has a place of business, is not consistent with the existing guidance on outsourcing and does not provide additional protections.

We agree that the delegation of certain functions by an investment fund manager would not, on its own, require the investment fund manager to register in the jurisdiction where the service provider is located. However, the investment fund manager is responsible for these functions and must supervise the service provider. 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.

List of commenters

- Alternative Investment Management Association
- BlackRock, Inc.
- BNP Paribas Investment Partners Canada Ltd.
- Borden Ladner Gervais LLP
- Brandes Investment Partners & Co.
- Canadian Imperial Bank of Commerce
- Canadian Pension Plan Investment Board
- Capital International, Inc.
- Davies Ward Phillips & Vineberg LLP
- Fidelity Investments Canada ULC
- GreyStone Managed Investments Inc.
- Invesco Trimark Ltd.
- Managed Funds Association
- Marathon Asset Management LLP
- McMillan LLP
- Orbis Investment Management Limited
- Pension Investment Association of Canada
- Portfolio Management Association of Canada
- RESP Dealers Association of Canada
- Stikeman Elliott LLP
- The Canadian Advocacy Council for Canadian CFA Institute Societies
- The Investment Adviser Association
- The Investment Funds Institute of Canada
- Veronica Armstrong Law Corporation

Annex D

PROPOSED AMENDMENT 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, Northwest Territories, Nunavut, Prince Edward Island, Saskatchewan and Yukon see Multilateral Policy 31-202 *Registration Requirement for Investment Fund Managers* and in New Brunswick, 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*.