



**Notice of and Request for Comment on  
Proposed Amendments to**

**National Instrument 31-103 *Registration  
Requirements and Exemptions***

**Registration of International and Certain Domestic  
Investment Fund Managers**

**October 15, 2010**

**Introduction**

The Canadian Securities Administrators (the CSA or we) are seeking comments on proposed amendments to National Instrument 31-103 *Registration Requirements and Exemptions* (NI 31-103 or the Rule) and Companion Policy 31-103 CP *Registration Requirements and Exemptions* (the Companion Policy) related to the registration of international and certain domestic investment fund managers.

In this notice, we refer to the following types of investment fund managers as non-resident investment fund managers:

- (1) international investment fund managers who carry out investment fund management activities from a location outside of Canada.
- (2) domestic investment fund managers with a head office in one province who carry out investment fund management activities in other provinces or territories.

On September 28, 2009, NI 31-103 came into effect, providing a new registration regime in Canada, including a new registration category for investment fund managers. NI 31-103 provides temporary exemptions for certain investment fund managers. Specifically, sections 16.5 and 16.6 of NI 31-103 currently provide temporary exemptions for non-resident investment fund managers, so that registration is not required in any province or territory until September 28, 2011.

We indicated in the Notice dated July 17, 2009 (the 2009 Notice) that accompanied NI 31-103 that we would publish a proposal for comment in 2010 to explain the circumstances where an international investment fund manager will need to register, and in what additional provinces and territories a domestic investment fund manager with a head office in Canada will need to register.

We are publishing for comment new exemptions in the Rule and additional guidance in the Companion Policy in these areas. The comment period will end on **January 13, 2011**. The proposed amendments to NI 31-103 are in Appendix A to this notice. The proposed guidance in the Companion Policy is in Appendix B.

The temporary relief provided in sections 16.5 and 16.6 of NI 31-103 will expire on September 28, 2011. In the event the proposed amendments are approved and implemented, we expect the implementation date of the proposed new exemptions to be very close to the expiry date of the existing temporary exemptions. We strongly encourage non-resident investment fund managers

to assess their circumstances in advance to determine whether they will need to be registered in any province or territory by September 28, 2011.

## **1. Summary and purpose of the proposed amendments to the Rule and the Companion Policy**

### ***Scope of the investment fund manager category***

The investment fund manager category is intended to ensure that investment fund managers have sufficient proficiency, integrity and solvency (including prescribed capital), to adequately carry out their functions. We identified the following risks in the CSA notice dated February 20, 2007 as being particular to the management of an investment fund:

- incorrect or untimely calculation of net asset value
- incorrect or untimely preparation of financial statements and reports
- incorrect or untimely provision of transfer agency or record-keeping services
- conflicts of interest between the fund manager and its investors

These risks concern investors in any investment fund regardless of where the investment fund manager is located. We think, however, that there will be circumstances where the investment fund manager registration requirement may be unduly burdensome to an investment fund manager who carries out activities outside of a particular province or territory, particularly where the investment fund has security holders in a province or territory due to circumstances beyond its control, for example when a security holder moves from one province to another.

### ***Registration of non-resident investment fund manager***

A non-resident investment fund manager would need to be registered in a province or territory in the following circumstances:

- (1) an international investment fund manager who carries out investment fund management activities from a location outside of Canada would need to register in the relevant province or territory, if the international fund it manages has security holders that are local residents and the international investment fund manager or the fund they manage, has actively solicited local residents to purchase securities of the fund.
- (2) a domestic investment fund manager who carries out investment fund management activities would also need to register in another province or territory in addition to the province or territory where its head office is located, if the domestic fund has security holders that are local residents and the domestic investment fund manager, or the fund it manages, has actively solicited local residents to purchase securities of the funds.

### ***Active solicitation***

In the proposed amendments to the Companion Policy, we provide guidance about

- our interpretation of the investment fund manager registration requirement, and
- what we mean by the term “actively solicited”.

### ***Proposed exemptions***

We are proposing the following exemptions from the investment fund manager registration requirement for non-resident investment fund managers:

1. Section 8.29.1 – *International investment fund manager* An international investment fund manager would not need to be registered if the investment fund it manages is only distributed to permitted clients, provided certain other conditions are met.

We are proposing thresholds for this exemption so that an international investment fund manager that has a significant presence in the Canadian market would not be able to rely on this exemption. The proposed thresholds are

- the fair value of all of the assets attributable to Canadian security holders of any investment fund for which it acts as investment fund manager should not be more than 10% of the fair value of all the assets of such fund
- the total assets of all funds managed by the investment fund manager that are attributable to Canadian security holders should be less than \$50 million

We specifically invite comments on the calculations required to monitor these thresholds and whether the thresholds proposed are appropriate.

2. Section 8.29.2 - *Non-resident investment fund manager* – This is a grandfathering exemption for non-resident investment fund managers where neither the investment fund manager nor the investment fund has actively solicited local residents after September 28, 2011.

### ***Notice to clients by non-resident investment fund manager***

We are also proposing a new notice requirement in section 14.5.1 of NI 31-103. This section would require all international and domestic investment fund managers to provide a notice to investors informing them of its non-resident status, as well as the risk that investors may not be able to enforce legal rights in the province or territory.

We are also proposing a transition period for this notice requirement.

We specifically invite comments from international and domestic investment fund managers on complying with this proposed requirement.

### ***Passport system***

Most investment fund managers can rely on the passport system to register in multiple jurisdictions with a single filing with the principal regulator. For more details on how a firm or individuals can register in multiple jurisdictions, please refer to National Policy 11-204 *Process for Registration in Multiple Jurisdictions*. We note however, that notification of reliance on the proposed exemption in section 8.29.1 is to be given to each regulator.

## **2. Authority for the proposed amendments**

In Ontario, the rule making authority for the proposed amendments is in paragraphs 7 and 8 of subsection 143(1) of the *Securities Act*.

### **3. Unpublished materials**

In developing the proposed amendments, we have not relied on any significant unpublished study, report or other written materials.

### **4. Anticipated costs and benefits**

The proposed amendments will make the Rule and the Companion Policy and the ongoing requirements more targeted, to the benefit of registrants and the investors they serve.

### **5. Request for comments**

We would like your input on the Rule and the Companion Policy. We need to continue our open dialogue with all stakeholders if we are to achieve our regulatory objectives while balancing the interests of investors and registrants.

All comments will be posted on the Ontario Securities Commission website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca) and on the Autorité des marchés financiers website at [www.lautorite.qc.ca](http://www.lautorite.qc.ca).

**All comments will be made publicly available.**

**Please note that 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. In this context, you should be aware that some information which is personal to you, such as your e-mail and residential or business address, may appear in the websites. It is important that you state on whose behalf you are making the submission.**

Thank you in advance for your comments.

#### **Deadline for comments**

Your comments must be submitted in writing by **January 13, 2011**.

Please send your comments electronically in Word, Windows format.

#### **Where to send your comments**

Please address your comments to all CSA members, as follows:

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
New Brunswick Securities Commission  
Registrar of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Superintendent of Securities, Newfoundland and Labrador  
Registrar of Securities, Northwest Territories  
Superintendent of Securities, Yukon Territory  
Registrar of Securities, Nunavut

Please send your comments **only** to the addresses below. Your comments will be forwarded to the remaining CSA member jurisdictions.

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### **Questions**

Please refer your questions to any of:

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## **6. Where to find more information**

We are publishing the proposed amendments with this Notice. The proposed amendments are also available on websites of CSA members, including:

[www.lautorite.qc.ca](http://www.lautorite.qc.ca)  
[www.albertasecurities.com](http://www.albertasecurities.com)  
[www.bcsc.bc.ca](http://www.bcsc.bc.ca)  
[www.msc.gov.mb.ca](http://www.msc.gov.mb.ca)  
[www.gov.ns.ca/hssc](http://www.gov.ns.ca/hssc)  
[www.sfsc.gov.sk.ca](http://www.sfsc.gov.sk.ca)  
[www.osc.gov.on.ca](http://www.osc.gov.on.ca)