

APPENDIX A

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

1. ***National Instrument 31-103 Registration Requirements and Exemptions is amended by this Instrument.***
2. ***Section 1.3(2) is replaced by the following:***

Except under the following sections, if a person or company is required to give notice to the regulator or the securities regulatory authority under this Instrument, the person or company may give the notice by giving it to the person or company's principal regulator:

- (a) section 8.18 [*international dealer*];
 - (b) section 8.26 [*international adviser*];
 - (c) section 8.29.1 [*international investment fund manager*]
 - (d) section 11.9 [*registrant acquiring a registered firm's securities or assets*];
 - (e) section 11.10 [*registered firm whose securities are acquired*].
3. ***Part 8 is amended by adding the following after section 8.29:***
 - 8.29.1 International investment fund manager**
 - (1) In this section, "permitted client" has the meaning given to that term in section 1.1 [*definitions*] 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, or an adviser registered under the securities legislation of the jurisdiction of the registered charity.
 - (2) Subject to subsections (3) and (4), the investment fund manager registration requirement does not apply to a person or company in respect of its acting as investment fund

manager for an investment fund if all securities of the investment fund distributed in Canada were distributed under an exemption from the prospectus requirement to a person or company that was a permitted client.

- (3)** The exemption in subsection (2) is not available unless all of the following apply:
- (a) the investment fund manager does not have a physical place of business in Canada;
 - (b) the investment fund 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 a completed Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service*.
- (4)** The exemption in subsection (2) is not available to an investment fund manager if, as at the end of its most recently completed financial year end, any of the following apply:
- (a) for any investment fund for which it acts as an investment fund manager, the fair value of the assets of the fund attributable to securities beneficially owned by residents of Canada is more than 10% of the fair value of all of the assets,
 - (b) for all investment funds for which it acts as an investment fund manager, the fair value of the assets of the funds attributable to securities beneficially owned by residents of Canada is more than \$50 million.
- (5)** If an investment fund manager relies upon the exemption in subsection (2), it must have previously notified the permitted client in writing of all of the following:
- (a) the investment fund manager is not registered in the local jurisdiction to act as an investment fund manager;

- (b) the foreign jurisdiction in which the head office or 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.
- (6) A person or company that relied on the exemption in subsection (2) must notify the regulator by December 1 of each year.

8.29.2 Non-resident investment fund manager

The investment fund manager registration requirement does not apply to a person or company in respect of its acting as an investment fund manager of an investment fund if all of the following apply

- (a) the activities of the investment fund manager are not conducted from a physical place of business in the local jurisdiction;
- (b) the investment fund manager is not incorporated, formed or created under the laws of the local jurisdiction;
- (c) the investment fund is not incorporated, formed or created under the laws of the local jurisdiction;
- (d) the investment fund is not a reporting issuer; and
- (e) except for a solicitation for a trade referred to in section 8.17 [*reinvestment plan*], neither the investment fund manager nor the investment fund has, after September 28, 2011, actively solicited residents of the local jurisdiction to purchase securities of the fund.

4. Section 14.1 is replaced by the following:

14.1 Investment fund managers exempt from Part 14

Except for the following provisions, this Part does not apply to an investment fund manager in respect of its activities as an investment fund manager:

- (a) section 14.5.1 [*notice to investors by non-resident registered investment fund managers*];
- (b) section 14.6 [*holding client assets in trust*];
- (c) section 14.12(5) [*content and delivery of trade confirmation*];
- (d) section 14.14 [*account statements*].

5. Part 14 is amended by adding the following after section 14.5:

14.5.1 Notice to investors by non-resident registered investment fund managers

- (1) A registered investment fund manager whose head office is not located in the local jurisdiction 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 non-resident status of the investment fund manager;
 - (b) the investment fund manager's jurisdiction of residence;
 - (c) the name and address of the agent for service of process of the investment fund manager in the local jurisdiction;
 - (d) the nature of risks to security holders that legal rights may not be enforceable in the local jurisdiction.
- (2) This section does not apply to an investment fund manager whose head office is in Canada if the investment fund manager has a physical place of business in the local jurisdiction.

6. Form 31-103F2 Submission to Jurisdiction and Appointment of Agent for Service is amended

- a. after the title by replacing** “(section 8.18 [international dealer] and 8.26 [international adviser])” **with the following:**

“(section 8.18 [international dealer], 8.26 [international adviser] and 8.29.1[international investment fund manager])”,

- b. by replacing paragraph 4 with the following:**

4. Section of NI 31-103 the International Firm is relying on:

- Section 8.18 [*international dealer*]
- Section 8.26 [*international adviser*]
- Section 8.29.1 [*international investment fund manager*]
- Other,

- c. replacing paragraph 9 with the following:**

9. Until 6 years after the International Firm ceases to rely on section 8.18 [*international dealer*], section 8.26 [*international adviser*] or section 8.29.1 [*international investment fund manager*], the International Firm must submit to the securities regulatory authority

- a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated; and
- b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service.

7. (1) Except as set out in (2) this Instrument comes into force on •.

(2) Section 5 comes into force on •.