

APPENDIX B

Amendments to Companion Policy 31-103CP *Registration Requirements and Exemptions*

1. ***Companion Policy 31-103CP Registration Requirements and Exemptions is amended by this Instrument.***
2. ***Section 1.1 [introduction] is amended in the first paragraph under the heading “Delivering disclosure and notices” by adding the following after “• 8.26 International adviser”:***

- 8.29.1 *International investment fund manager*

3. ***Section 1.2 [definitions] is amended***

a. in the second paragraph under the heading “Permitted client” by adding after “• 8.26 International adviser” the following:

- 8.29.1 *International investment fund manager*

b. replacing the paragraph under the heading “Exemptions from registration when dealing with permitted clients” with the following:

NI 31-103 exempts international dealers, international advisers and international investment fund managers from the registration requirement if they deal with certain permitted clients and meet certain other conditions.

4. ***Section 1.3 [fundamental concepts] is amended by replacing the heading “Registration trigger for investment fund managers” and the text under that heading with the following:***

Registration trigger for investment fund managers

A person or company that directs or manages the business, operations or affairs of an investment fund is an investment fund manager. A firm must register in each jurisdiction where it acts as an investment fund manager. Investment fund managers are not subject to the business trigger.

You are required to register in a jurisdiction if you direct or manage the business, operations or affairs of an investment fund from a physical place of business in that jurisdiction. An investment fund manager that does not

have a physical place of business in a jurisdiction will also need to register in that jurisdiction if

- the investment fund has security holders resident in that jurisdiction, and
- after the investment fund manager registration requirement came into force (on September 28, 2009), the investment fund manager or the investment fund actively solicited the purchase of the fund's securities by residents in that jurisdiction.

This means that an international investment fund manager that carries out its investment fund management activities from a physical place of business outside of Canada will be required to register in each jurisdiction where it has security holders that have been actively solicited. In addition, a domestic investment fund manager that carries out its investment fund management activities from a physical place of business in a jurisdiction will be required to register in that jurisdiction; it will also have to register in each other jurisdiction where it has security holders that have been actively solicited.

Investment fund managers that do not have a physical place of business in a jurisdiction and have not actively solicited in that jurisdiction after September 28, 2011, and meet certain other conditions, will not be required to register. For guidance on the non-resident investment fund manager exemption, see section 8.29.2 of this Companion Policy.

Active solicitation

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.

It includes:

1. direct communication with residents of the jurisdiction to encourage their purchases of the fund's securities
2. advertising in Canadian publications or other Canadian media (including the internet), if the advertising is intended to encourage the purchase of the fund's securities by residents of the jurisdiction (either directly from the fund or in the secondary/resale market)
3. purchase recommendations being made by a third party to residents of the 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 jurisdiction in response to the recommendation.

It would not include advertising in international publications or other international media (including the internet) – including advertising to promote the image or general perception of a fund – unless the advertising specifically encouraged an investment in the fund by residents of the jurisdiction.

5. Section 7.3 [investment fund manager category] is amended by replacing the first paragraph with the following:

Investment fund managers direct the business, operations or affairs of an investment fund.

6. Part 8 is amended by adding after section 8.28 [capital accumulation plan exemption] the following:

8.29.1 International investment fund manager

An investment fund manager that does not have a physical place of business in Canada is exempt from the investment fund manager registration requirement if the investment fund only distributes its securities in Canada to permitted clients and certain other conditions set out in section 8.29.1 are satisfied, including limitations on the fair value of the assets of the funds it manages that are attributable to Canadian investors.

If an investment fund manager is relying on the exemption in more than one jurisdiction, it must provide an initial notice by filing a Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service* (F2) with the regulator in each jurisdiction where it relies on the exemption. If there is any change to the information in the investment fund manager's F2, it must update it by filing a replacement F2 with them.

So long as the investment fund manager continues to rely on the exemption, it must file an annual notice with each regulator. Subsection 8.29.1(6) does not prescribe a form of annual notice. An email or letter will therefore be acceptable.

8.29.2 Non-resident investment fund manager

An investment fund manager that does not have a physical place of business in a jurisdiction, but manages an investment fund with security holders in that jurisdiction, is not required to register in that jurisdiction if neither it nor the fund has actively solicited residents in that jurisdiction after September 28, 2011 (except in respect of a reinvestment plan), and it meets certain other conditions. For guidance on the meaning of the term “actively solicited”, see section 1.3 of this Companion Policy.