

Ontario Securities Commission

Companion Policy 32-102CP

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COMPANION POLICY 32-102CP

REGISTRATION EXEMPTIONS FOR NON-RESIDENT INVESTMENT FUND MANAGERS

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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 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 and Newfoundland and Labrador.

Appendix A contains a chart illustrating the requirement to register as an investment fund manager for those investment fund managers who are non-residents, as well as the availability of the exemptions provided in MI 32-102.

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 one or more investment funds. 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
- preparing and delivering 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 one or more investment funds from a place of business in that jurisdiction.

(b) Non-resident investment fund managers

Triggering registration in the case of non-resident investment fund managers in a local jurisdiction depends on whether

- (i) the person or company acts as an investment fund manager; and
- (ii) that manager is managing one or more investment funds that distribute or have distributed securities to residents of the local jurisdiction

To the extent the person or company is acting as an investment fund manager, the next question is whether the non-resident investment fund manager is managing one or more investment funds that have distributed securities to residents in the local jurisdiction.

If one or more of the investment funds managed by the investment fund manager have 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.

Whether or not the distribution process is continuous, by way of a prospectus or under a prospectus exemption, is not relevant to this connecting factor, since the investment fund is an

issuer over which the regulator in the local jurisdiction has authority. The actual distribution of the investment fund's securities is subject to dealer registration and prospectus requirements.

It is the fact that there has been a distribution to holders in the local jurisdiction, and not how the distribution was carried out, that connects the non-resident investment fund manager to the jurisdiction in the regulatory perspective of investor protection. Investors in investment funds managed by non-resident investment fund managers face the same risks as those who invest in local investment funds.

PART 2 EXEMPTIONS FROM INVESTMENT FUND MANAGER REGISTRATION

3. No security holders or active solicitation

GENERAL

Generally, a non-resident investment fund manager will not be required to register if:

- the investment fund no longer has security holders in the local jurisdiction, notwithstanding a distribution of securities in the past;
- the investment fund has security holders in the local jurisdiction but has not actively solicited residents in the local jurisdiction after the coming into the force of MI 32-102;
- the security holders are permitted clients.

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 any of the investment funds managed by it who are resident in that jurisdiction or there is no active solicitation by the investment fund manager or any of the investment funds in that jurisdiction.

ACTIVE SOLICITATION

One of the conditions of this exemption is that the investment fund manager and the investment funds it manages have not, after September 27, 2012, actively solicited the purchase of the funds' 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 outstanding securities of its investment funds have been distributed in the local jurisdiction to permitted clients only 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.

APPENDIX A
CHART ILLUSTRATING THE NON-RESIDENT INVESTMENT FUND MANAGER
REGISTRATION REQUIREMENT AND THE AVAILABILITY OF EXEMPTIONS

The following chart illustrates the requirement to register as an investment fund manager for those investment fund managers who are non-residents, as well as the availability of the exemptions provided in MI 32-102.

Is the person acting as an investment fund manager?

To respond, consider the following functions and activities

- 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
- preparing and delivering 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

If not an investment fund manager = registration is not required

If an investment fund manager, has the fund distributed securities in the local jurisdiction?

