THE INVESTMENT FUNDS INSTITUTE OF CANADA
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA

Joanne De Laurentiis
President & CEO
416-309-2300
jdelaurentiis@ific.ca

BY ELECTRONIC MAIL: jstevenson@osc.gov.on.ca, consultation-en-cours@lautorite.qc.ca

January 13, 2011

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

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, ON M5H 3S8

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

Dear Sirs / Mesdames:

RE: Proposed Amendments to NI 31-103 Registration Requirement and Exemptions – Registration of International and Certain Domestic Investment Fund Managers

We are writing to provide comments with respect to the Proposed Amendments (the "Proposed Amendments") to National Instrument 31-103 *Registration Requirements and Exemptions* ("NI 31-103") and to Companion Policy 31-103 *Registration Requirement and Exemptions* ("Companion Policy 31-103CP") regarding registration of international and certain domestic investment fund managers.

As you will note from our comments below, The Investment Funds Institute of Canada ("IFIC") and its members strongly oppose the Proposed Amendments. While we believe our comments are self-explanatory, we would be very happy to meet with CSA staff to discuss our concerns further.

Domestic Fund Managers

(a) General

Under the Proposed Amendments, domestic fund managers would be required to register in the local jurisdiction "if the domestic fund has security holders that are local residents and the domestic fund manager, or the fund it manages, has actively solicited local residents to purchase the securities of the fund."[1] In our view, this approach confuses both who an investment fund manager's clients are and where the services are actually provided. Further, this runs counter to the approach the CSA adopted with respect to adviser registration under NI 31-103.

More specifically, we would like to point out that the CSA has moved away from the "flow though" approach to registration for advisers in the context of advising investment funds. Previously, some members of the CSA took the position that advice to an investment fund flowed through to the investors of the fund, which effectively required advisers to be registered in any jurisdiction where securities of the investment fund were sold. However, with the implementation of NI 31-103, this is not the case. In the Notice that accompanied the final publication of NI 31-103 in July 2009, the CSA acknowledged that the investment fund, rather than the individual security holder of the fund, is the client of the adviser. As a result, adviser registration in this context is only required where the adviser and the investment fund are located. We believe the same principles should apply to investment fund manager registration, at least with respect to domestic investment fund managers. In our view, like the adviser scenario, the client of the investment fund manager is the investment fund. This is consistent with the fact that the duty of care imposed on investment fund managers under securities acts and section 2.1 of NI 81-107 is owed to the investment fund and not the individual security holders of the fund.

We believe that the requirement to register in the local jurisdiction should not be based on whether the fund has security holders that are local residents or the fact that the fund has actively solicited local residents to purchase securities of the fund. Rather, we believe that a fund manager should only be required to register in its principal jurisdiction and any other jurisdiction in which it carries out some element of investment fund manager activity or in which the investment fund under management is located. For example, we believe that if an investment fund manager's head office is in Toronto, but the systems and staff responsible for unitholder recordkeeping are located in Montreal and the systems and staff responsible for fund accounting are located in Winnipeg, the investment fund manager should be registered in each of Ontario, Quebec and Manitoba. To the extent that a fund manager carries on registrable activities in the local jurisdiction, we recognize that the local regulator (and the other

[1] Notice and Request for Comment - Proposed National Instrument 31-103 *Registration Requirements and Exemptions* (October 15, 2010).

members of the CSA) would have an interest in easily undertaking compliance and enforcement actions in respect of those activities.

It is not clear to us how regulatory oversight and investor protection would be enhanced by requiring a fund manager to register in an additional Canadian jurisdiction in which it does not actually carry out fund manager activities. We expect, as a practical matter, securities commissions will defer, in any event, compliance and enforcement matters to jurisdictions where activities are carried out in any event.

(b) Registration fees under the passport system

The CSA notes that most investment fund managers can rely on the passport system to register in multiple jurisdictions with a single filing with the principal regulator. While we appreciate the administrative efficiencies associated with the passport system and the passport interface, we remain concerned that there were no fee reductions resulting from the adoption of National Policy 11-204 *Process for Registration in Multiple Jurisdictions*. We believe that the mutual fund industry already pays a disproportionate share of capital markets participation fees, a fact the Ontario Securities Commission acknowledged after the October 2009 consultation on OSC Rule 13-502 *Fees*. The OSC stated, "We agree with the assessment that the mutual fund industry is currently paying a disproportionate share of fees", and are committed to resolving the issue as soon as practicable. As currently drafted, the Proposed Amendments would simply add to the fee burden borne by the mutual fund industry (and, ultimately, mutual fund investors) without, in our view, meaningfully adding to the regulatory oversight of registrants.

(c)Anticipated costs and benefits

The CSA expects that "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."[2]As outlined above, we are concerned that the anticipated costs have not been fully taken into account. We note that pursuant to clause 143.2(2)7 of the Ontario Securities Act, a description of the anticipated costs and benefits of a proposed rule are to be published with the notice of every proposed rule. We do not believe that the Notice meets this statutory requirement. Without the provision of further analysis, we do not see how the Proposal relating to domestic investment fund managers will result in any of the expected benefits stated by the CSA in the Notice,

On the basis of the foregoing, we would strongly urge the CSA to reconsider the Proposed Amendments to require only that a domestic investment fund manager register in its principal jurisdiction and any other jurisdiction in which it carries out investment fund manager activities, or in which the investment fund under management is located.

[2] Notice and Request for Comment - Proposed National Instrument 31-103 *Registration Requirements and Exemptions* (October 15, 2010).

International Investment Fund Managers

Under the Proposed Amendments, an international investment fund manager would be exempt from the requirement to register in the relevant province or territory only if it meets the conditions set out in proposed section 8.29.1. We do not object to the general direction of proposed section 8.29.1, however we do object to the conditions set out in proposed subsection (4), particularly as they apply to the institutional market.

Many off-shore investment funds are created specifically for distribution to non-taxable institutional investors, including, for example, pension funds. We expect that it would not be uncommon for a single, large pension plan to hold a C$50 million investment in a single off-shore fund, which would then require that the fund's manager become registered in Canada. Market movements also could determine whether the dollar threshold is breached and we do not believe this to be an appropriate registration trigger. Similarly, we expect that it would not be uncommon for a single, large pension plan's investment in an off-shore fund to comprise greater than 10% of that fund's total assets; again, this would require that the fund's manager become registered in Canada. We are concerned that this registration requirement would have the unwanted effect of reducing the number of unique, off-shore vehicles available for investment by Canadian pension plans and other institutional classes of permitted clients.

We recognize that paragraphs (o) and (p) of the definition of "permitted client" in NI 31-103 refer to individuals who may benefit from requiring an off-shore investment fund manager to become registered. However, since the remainder of that definition refers to either very large, sophisticated governmental bodies, financial institutions or securities registrants, proposed subsection 8.29.1(4) should not apply to an international investment fund manager that distributes its funds only to "permitted clients" other than those contemplated by paragraphs (o) and (p) of the definition.

Notice to clients by non-resident investment fund manager

The CSA is proposing a new notice requirement that would require all international and domestic investment fund managers to provide a notice to investors informing them of their non-resident status, as well as the risk that investors "may not be able to enforce legal rights" in the local jurisdiction. While we do not object to the notice requirement for non-resident international investment fund managers, we believe that this requirement is meaningless for domestic non-resident investment fund managers.

The June 25, 2010 proposed amendments to section 14.5 of NI 31-103 propose to codify the February 26, 2010 omnibus / blanket relief order issued by each member of the CSA exempting firms whose head office is in Canada from the requirement to provide the notice to clients if the firm has a physical place of business in the jurisdiction where the client resides. The CSA indicated that the notice requirement in section 14.5 was more appropriate to a registrant that does not have a physical place of business in the jurisdiction. Given the principle of reciprocal enforcement between Canadian jurisdictions, we would argue that the notice requirement is not appropriate to domestic investment fund managers regardless of whether the manager does or does not have a physical place of business in the jurisdiction. Although

we did not address this issue in our September 30, 2010 submission, we recommend that the CSA consider removing the requirement for domestic investment fund managers, as well as other Canadian resident registrants. In our view, the notice only serves to create unwarranted concerns among the investing public as there is in fact little if any risk that legal actions initiated in one Canadian jurisdiction will not be enforceable in another.

****

Thank you for the opportunity to provide comments on the proposed amendments relating to the registration of international and certain domestic investment fund managers. Please contact the undersigned directly or Ralf Hensel, Director – Policy, Manager Issues, at (416) 309-2314 or rhensel@ific.ca, with any questions concerning these comments.

Yours truly,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

By: Joanne De Laurentiis
President & Chief Executive Officer