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BY ELECTRONIC MAIL

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

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, ON M5H 3S8
E-mail: jstevenson@osc.gov.on.ca

c/o Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
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Dear Sirs/Mesdames:

Re: Notice of and Request for Comment on Proposed Amendments to National Instrument 31-103 *Registration Requirements and Exemptions* (“NI 31-103”) and Companion Policy 31-103CP - Registration of International and Certain Domestic Investment Fund Managers

We understand the Canadian Securities Administrators (“CSA”) are seeking comments on proposed amendments to the regulatory framework for international and certain domestic investment fund managers contained in NI 31-103 and CP 31-103 pursuant to a Notice and Request for Comments issued by the CSA dated October 15, 2010 (the “CSA Notice”).

To assist with this process, we have provided our comments and suggestions on these proposals below. The CSA Notice refers to non-resident investment fund managers who carry out investment fund management activities from a location outside of Canada as international investment fund managers. Our comments are primarily intended to address the proposed amendments as they relate to international investment fund managers.

Non-resident investment fund manager

The CSA originally published the proposed National Instrument 31-103 *Registration Requirements* and the proposed Companion Policy 31-103 *Registration Requirements* on February 20, 2007. The proposed instrument contained an exemption that addressed the circumstances under which international investment fund managers would be exempt from the registration requirements under NI 31-103. In particular, section 9.16 of the proposed instrument provided that the registration requirement would not apply to an investment fund manager that had no establishment in Canada or officers, employees or agents resident in Canada, provided it was managing a fund whose securities were: (a) primarily offered outside of Canada, (b) only distributed in Canada through registrants, and (c) distributed in Canada in reliance upon prospectus exemptions.

The CSA received a number of comments with respect to the proposed instrument which advocated that international investment fund managers should not be required to register in Canada simply because the funds they manage have Canadian investors. In response to these comments published on February 29, 2008, the CSA advised that it would eliminate certain exemptions contained in the proposed instrument, including the exemption in section 9.16. In a subsequent notice dated July 17, 2009, the CSA indicated that there would be circumstances under which international investment fund managers would be required to register and that it would publish a proposal to address these circumstances. The revised instrument also provided a temporary two-year exemption for investment fund managers whose head office was located outside Canada, which is contained in section 16.6 of NI 31-103.

The principle expressed in the CSA Notice is 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 the investment fund it manages has security holders that have been actively solicited. However, under the proposed exemption, there are circumstances where an international investment fund manager may be required to register in Canada even though neither the investment fund nor its manager has actively solicited the purchase of the fund's securities by Canadian residents. We submit, in such circumstances, the investment fund manager registration requirement should not be required under the principle expressed in the CSA Notice and may be unduly burdensome to an international investment fund manager who carries on activities outside of Canada.

One example is in the case of an investment fund organized outside of Canada that files a non-offering prospectus in one or more Canadian jurisdictions for the purpose of satisfying a regulatory requirement rather than for the purpose of distributing securities in such jurisdictions. This occurs in the case of a two-tiered structure under which a Canadian investment fund, which is managed by a registered investment fund manager, obtains exposure to the returns of an

offshore reference fund through a forward agreement. In the case of such two-tier structures, it is our understanding that the Autorité des marchés financiers (“AMF”) requires the reference fund to become a reporting issuer in Québec. Accordingly, in order to meet this requirement a practice has developed for the reference fund, including where the reference fund is an offshore fund, to file a non-offering prospectus in Québec and, in certain circumstances, in other provinces such as Ontario. The reference fund does not typically actively solicit the purchase of its securities by Canadian (or offshore) residents. The counterparty or an affiliate of the counterparty under the forward agreement may hedge its exposure under the forward agreement to the performance of the reference fund by acquiring securities of the reference fund. If the counterparty or an affiliate chooses to hedge its exposure by subscribing for units of the reference fund, this subscription would not be as a result of active solicitation by the reference fund or its manager. In some of the two-tier structures with an offshore reference fund, the party that subscribes for reference fund securities is a foreign affiliate of the Canadian financial institution counterparty and the issue of the reference fund securities is an offshore distribution. If the party that subscribes for reference fund securities is a Canadian entity, securities of the reference fund are distributed in Canada pursuant to prospectus exemptions.

In this example, the international investment fund manager of the offshore reference fund would be required to register in Canada and no exemption would be available to the international investment fund manager under the current proposed amendments contained in the CSA Notice. The proposed amendments would provide an exemption in section 8.29.2 for international investment fund managers where neither the investment fund manager nor the investment fund actively solicit local residents after the investment fund manager registration requirement came into force. However, the international investment fund manager would not be able to avail itself of the exemption in the circumstances described above because it would not be able to satisfy the condition for the exemption that the offshore reference fund it manages is not a reporting issuer in any Canadian jurisdiction.

We suggest that the CSA consider an exemption from the investment fund manager registration requirements for international investment fund managers that manage an offshore investment fund that otherwise meets the conditions set out in section 8.29.2 except that it is a reporting issuer in a Canadian jurisdiction provided that the offshore investment fund has not distributed securities in Canada under a prospectus. We submit that it is not inconsistent with the principles set forth in the CSA Notice that an international investment fund manager that does not have a physical place of business in Canada but manages an offshore investment fund that is a reporting issuer in a Canadian jurisdiction is not required to register in that jurisdiction if neither the investment fund manager nor the fund has actively solicited residents in that jurisdiction. In such circumstances, the investment fund manager registration requirement is not required under the principle expressed in the CSA Notice and may be unduly burdensome to an international investment fund manager.

We appreciate the opportunity to submit our comments on behalf of members of the Investment Funds and Asset Management Group at McMillan LLP. Please do not hesitate to contact the undersigned (contact information above), Michael A. Burns at (416) 865-7261 or Jason A. Chertin at (416) 865-7854 should you require further information.

Yours truly,

Margaret C. McNee

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