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PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA

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Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Nunavut
Superintendent of Securities, Yukon Territory

January 13, 2011

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8

and

Madame Anne-Marie Beaudoin
Directrice du sécretariat
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Dear Sir and Madam:

Re: Response to CSA Notice 31-320 on Proposed Amendments to National Instrument 31-103 *Registration Requirements & Exemptions* - Registration of International and Certain Domestic Investment Fund Managers

The Portfolio Management Association of Canada ("PMAC"), through its Industry, Regulation and Tax Committee, is pleased to have the opportunity to submit the following comments regarding the Proposed Amendments to National Instrument 31-103 *Registration Requirements and Exemptions* ("NI 31-103") published for comment on October 15, 2010.

As background, the Portfolio Management Association of Canada ("PMAC", formerly the Investment Counsel Association of Canada ("ICAC")) represents investment management firms registered to do business in Canada as portfolio managers. Our 140 + members represent both large and small firms managing institutional and private client portfolios. PMAC was established in 1952 and manages in excess of $750 B assets

(excludes mutual funds assets). Our mission is to advocate the highest standards of unbiased portfolio management in the interest of the investors served by Members.

To begin, we would like to express our appreciation of your efforts in seeking industry input into policy formulation and rule-making. Given our membership consists of many domestic and international investment fund managers, our views in this letter will seek to express concerns with the proposals from both vantage points.

1) International Investment Fund Managers

i) Section 8.29.1

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 to become registered in Canada. Market movements could also 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.

Moreover, the reality is that the utilization of an offshore investment fund may simply be an efficient investment vehicle utilized by an international adviser carrying out a mandate with a permissible Canadian domiciled "permitted client" under the exempt international adviser regime in section 8.26 of NI 31-103.

In light of the above, we would propose the following recommendations to the proposed International Fund Manager Exemption:

The international investment fund manager Exemption in section 8.29 should mirror or at least be consistent with the threshold triggers already established for the International Adviser exemption set out in s. 8.26 of NI 31-103. This would remove the proposed arbitrary triggers of (i) 10% ***per fund*** limit and (ii) the $50 million CAD limit and replace them both with a threshold consistent with s. 8.26(4)(d) being a 10% maximum AUM by Canadians based on the fair value net assets of the foreign funds for which an international IFM and its affiliates act as IFM (i.e. including all of its affiliates and its affiliated partnerships but excluding those that it may have registered in Canada).

Where an international fund manager is unable to rely on the proposed exemption, or decides it wants to register, we would also recommend that the CSA consider implementing some flexibility around the following items:

(a) the international fund manager should not be required to be convert its financial statements to Canadian GAAP, but should be able to be file in Canada the same financial statements it prepares for filing in its home jurisdiction ;
(b) the specific Canadian proficiency and experience requirements for the Chief Compliance Officer of the international fund manager should be not apply to any CCO duly registered with its principal foreign regulator.
(c) insurance & capital requirements of the international fund manager should not apply to any company duly registered with its principal foreign regulator.

The wording of the proposed exemption in section 8.29.1(2), as currently written, requires that "all the securities of the investment fund distributed in Canada were distributed under an exemption from the prospectus requirements to a person or company that was a permitted client". As the concept of a "permitted client" is a new one (i.e. just coming into force with NI 31-103), we recommend this condition should be reworded to apply to future distributions only.

ii) Notice to Clients Section 14.5.1 of NI 31-103

Under NI 31-103, the CSA are proposing to require non-resident investment fund managers to provide notice to investors informing them of that non-resident status due to the risk that investors may not be able to enforce their legal rights.

We are supportive of this requirement **for International Fund Managers only,** given this enforcement of legal rights is a risk for which investors have a right to be fully aware. With regard to our previous recommendations to allow some flexibility for International Investment Fund Managers with respect to financial reporting, proficiency, capital and insurance, to the extent deemed necessary, we would not object to an additional disclosure of these items being included in the mandatory section 14.5 "Notice to investors by non-resident registered investment fund managers".

2) Domestic Investment Fund Managers

i) Proposed Requirement To Register In Another Province Or Territory In Addition To The Province Or Territory Where Its Head Offices Is Located.

Under the Proposed Amendments, domestic fund managers would be required to register in each jurisdiction in which its funds have 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 funds.

We strongly object to this proposal for the following reasons:

1. We do not believe this requirement will enhance investor protection. Investors in both publicly and privately offered investment funds already have regulatory and common law rights of action against funds and their investment fund managers for misrepresentations in offering documents, for breach of fiduciary duties under relevant declarations of trust or trust agreements or simply at common law, as well as in tort for negligence. Registration does not enhance those rights.

2. To the extent that an investment fund manager has no operations in a particular jurisdiction, we fail to see how registration in the jurisdiction will enhance the local CSA member's ability to oversee that manager's activities in any meaningful way. While we recognize that registration would enable the local regulator to conduct

regular compliance exams, the notion that the local regulator needs or wants that ability seems to us to be in direct conflict with the philosophy of the passport regime and the concept of each registered firm having a "principal regulator".

3. We believe this Proposed Requirement is out of step with amendments in NI 31-103 which clearly defines who an investment fund managers' clients are and where the services are actually provided. It is also out of step with the CSA's moved away from the "flow through" approach to registration for advisers who provided advice to investment funds. With the implementation of NI 31-103 , the CSA made it clear that the investment fund, rather than the individual security holder of the fund, is the client of the adviser. Therefore, adviser registration is only required in the jurisdictions in which the adviser and the investment fund are located. We believe the same principles should apply to domestic investment fund manager registration since the client of the investment fund manager is the investment fund (not the investors in that fund) and the duty of care imposed on investment fund managers under securities acts and section 2.1 NI 81-107 is owed to the investment fund and not the individual investors in the fund.

We recommend that a domestic investment 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, if a firm has a head office in Vancouver, but has accounting and systems staff responsible for unitholder record keeping in Montreal and Toronto, we believe the investment fund manager should be registered in each of BC, Quebec and Ontario. To the extent that an investment fund manager carries on registerable activities in the local jurisdiction, we recognize that the local regulator (and the other members of the CSA) would have an interest in easily undertaking compliance and enforcement actions in respect of those activities.

ii) Notice To Clients Section 14.5.1 of NI 31-103

We are strongly opposed to the application of proposed section 14.5.1 to domestic investment fund managers.

Firstly, the rationale provided for this notice has been to make investors aware of risks from "non-resident" investing. Given the principle of reciprocal enforcement between Canadian jurisdictions, there is in fact little risk that legal actions initiated in one Canadian jurisdiction would not be enforceable in another. Given this fact, we believe such notice would only result in false concerns and would in effect be give investors a misleading message, that "investing in your local province" is less risky.

For these reasons, we strongly recommend that the CSA remove the notice requirement for domestic investment fund managers.

iii) Registration fees under the passport system

Although, we acknowledge that registration in multiple jurisdictions is administratively quite easy under the passport system, we would like to point out that registration in those jurisdictions also requires the payment of fees. As we indicated in section 2 (ii), above, we do not believe that registration in multiple jurisdictions, as contemplated under the current proposals, will result in enhanced investor protection nor in enhanced regulatory oversight of investment fund managers. Accordingly, we object to a proposal that would impose increase fees on market participants with no corresponding regulatory benefit.

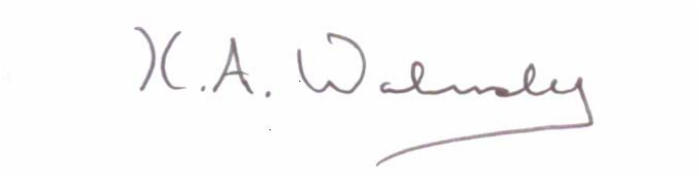
Conclusion:

We appreciate your efforts to improve the regulation of international and non-resident investment fund managers, however, we urge the CSA to consider the recommendations as set out in this letter.

We would be pleased to discuss any of these issues further. If you have any questions or concerns regarding our submission, please do not hesitate to contact Katie Walmsley (kwalmsley@portfoliomanagement.org) at (416) 504-7018.

Yours truly,

Portfolio Management Association of Canada



Katie Walmsley, President
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PMAC,Industry Regulation & Tax Committee
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