

April 10, 2012

Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Financial Services Regulation Division, Service NL, Government of Newfoundland and Labrador

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
e-mail: jstevenson@osc.gov.on.ca

Me Anne-Marie Beaudoin
Secrétaire de l'Autorité
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3
e-mail: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Madams:

Re: Proposed Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers* and Companion Policy 32-102CP *Registration Exemptions for Non-Resident Investment Fund Managers*

The Canadian Bankers Association (“CBA”) works on behalf of 53 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 267,000 employees. The CBA advocates for effective public policies that contribute to a sound, successful banking system that benefits Canadians and Canada’s economy. The CBA also promotes financial literacy to help Canadians make informed financial decisions and works with banks and law enforcement to help protect customers against financial crime and promote fraud awareness.

We appreciate the opportunity to comment on the proposed Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers* (“MI 32-102”) and Companion Policy 32-102CP *Registration Exemptions for Non-Resident Investment Fund Managers* (“32-102CP” and, together with MI 32-102, “32-102”). 32-102 was issued by the

securities regulators in Ontario, Quebec, New Brunswick and Newfoundland and Labrador simultaneous with the publication by the securities regulators in all other Canadian jurisdictions of the proposed Multilateral Policy 31-202 *Registration Requirement for Investment Fund Managers* (“MP 31-202”).

General Comments

We are very concerned about the approach to the registration of non-resident investment fund managers which is proposed in 32-102 and the lack of consensus among the Canadian Securities Administrators (“CSA”) in this regard. For the reasons set out below, we ask the securities regulators in Ontario, Quebec, New Brunswick and Newfoundland and Labrador (the “Regulators”) to reconsider their position in favour of the approach presented in MP 31-202.

Registration Requirement

The difference of approach among the CSA members to the registration of non-resident investment fund managers stems from a diverging interpretation of substantively the same legislative provisions. In essence, at issue is the interpretation of a trigger for the registration, in a local jurisdiction, of an investment fund manager that either does not have (a) the head office or principal place of business in Canada or (b) a place of business in a local jurisdiction (a “**non-resident investment fund manager**”).

Securities legislation requires persons and companies that act as investment fund managers to register as such.¹ The activity of the would-be registrant in a local jurisdiction is therefore key to determining whether its registration as an investment fund manager is required. Based on substantively the same definition of an “investment fund manager” in the securities legislation, such activity comprises directing the business, operations and/or affairs of an investment fund.² Therefore, the analysis of whether registration is required presumably turns on whether the would-be registrant is directing the business, operations and/or affairs of an investment fund in a local jurisdiction.

32-102 would exempt non-resident investment fund managers from the requirement to register in a local jurisdiction if there are no significant connecting factors to the jurisdiction. In the Regulators’ view, the distribution of securities in a local jurisdiction is a significant connecting factor to that jurisdiction. Consequently, a non-resident investment fund manager would trigger

¹ For instance, see *Ontario Securities Act*, s. 25(4) Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not act as an investment fund manager unless the person or company is registered in accordance with Ontario securities law as an investment fund manager. See also *Quebec Securities Act*, s. 148 No person may act as a[n] ... investment fund manager unless the person is registered as such. See also *New Brunswick Securities Act*, s. 45 Except where exempted under the regulations, a person shall not ... (c) act as an investment fund manager, ... unless the person is registered, in accordance with the regulations, in the category that the regulations prescribe for the activity. See also *Newfoundland and Labrador Securities Act*, s. 26. (1) A person or company shall not act as ... (c) an investment fund manager unless that person or company is registered in accordance with the securities law of the province. (2) An individual shall not, directly or indirectly ... (c) perform a prescribed function or duty for a person or company required to be registered under subsection (1) unless that person or company is registered in accordance with the securities law of the province.

² For instance, see *Ontario Securities Act*, s. 1(1) ..., “investment fund manager” means a person or company that directs the business, operations or affairs of an investment fund. See also *Quebec Securities Act*, s. 5. ... “investment fund manager” means a person who directs the business, operations and affairs of an investment fund. See also *New Brunswick Securities Act*, s. 1(1) ... “investment fund manager” means a person who directs the business, operations or affairs of an investment fund. See also *Newfoundland and Labrador Securities Act*, s. 2. (1)(t.2) “investment fund manager” means a person or company who has the power to direct and exercises the responsibility of directing the affairs of an investment fund.

the registration requirement under 32-102 if either the investment fund or the investment fund manager distributes or has distributed the fund's securities in that jurisdiction. The Regulators further state that if an investment fund has security holders in a local jurisdiction, this gives rise to investment fund management activities in that jurisdiction, and certain risks associated with those activities give rise to investor protection concerns.

We are concerned about this position for a number of reasons. If presence of security holders in a jurisdiction is sufficient to trigger the registration requirement, a change in the jurisdiction of a single or a small number of security holders would trigger the obligation to register. Investment fund managers would therefore lose control of their choice of jurisdictions in which they wish to be registered. Further processes would have to be developed to constantly monitor changes in security holders' addresses to ensure that registration in a local jurisdiction is sought promptly by investment fund managers when needed. It is not clear whether registration in a local jurisdiction would be required (a) at the time a security holder moves to a jurisdiction or (b) at the time the investment fund manager becomes aware of the move. It is also not clear whether there would be a grace period during which registration must be sought or failure to register corrected.

Please also consider that in response to a relocation of a single or a small number of security holders, investment fund managers may trigger forced redemptions, where possible, of such investors' securities, as the initial and on-going cost of registration would likely outweigh the fees earned on the positions held by these investors. This would result in a taxable event for investors if the positions were held in non-registered accounts, and would necessitate determining appropriate substitutes to invest in. Investors would likely not be pleased with such an outcome. Also, we are concerned that such an outcome would decrease the availability of funds and reduce competition, neither of which is in the interest of investors.

We support the goal of investor protection. However, to interpret the legislation such that mere presence of a fund's security holders in a jurisdiction gives rise to the obligation to register as a non-resident investment fund manager in that jurisdiction is overly-expansive, in our view. We believe that securities distribution is indeed more relevant to the analysis of the dealer registration and prospectus requirements, rather than the investment fund manager registration requirement. We further believe that the focus of the interpretation of the investment fund manager registration requirement should be on the analysis of a range of activities that an investment fund manager directs, manages and performs in a local jurisdiction, rather than solely on securities distribution in a jurisdiction, how ever minimal it may be. Accordingly, we fully subscribe to the approach outlined in MP 31-202.

Namely, we agree that a person or company should be required to register as a non-resident investment fund manager in a jurisdiction if they carry on the activities of an investment fund manager in that jurisdiction. Whether registration is required should depend on the types of activities that are taking place in the jurisdiction, including those listed in MP 31-202. We agree that no single function or activity should be determinative in this analysis, and that the presence of security holders and/or the solicitation of investors should not automatically require an investment fund manager to register in a jurisdiction.

In addition, we believe that it is important to ensure that the goal of investor protection is appropriately balanced against the goal of market efficiency such that it does not result in unnecessary regulatory burden on the industry, or client confusion and concern. Diverging interpretation of the registration requirement for non-resident investment fund managers among the CSA members, and the resulting inconsistencies in the regulatory framework, would create such unnecessary burden on the industry, and would also have the potential to result in client

confusion and concern. For these and other above-noted reasons, we ask the Regulators to reconsider their position in favour of the approach presented in MP 31-202.

Other Comments

If the decision is to proceed with 32-102, please consider the following comments we have regarding the other aspects of the proposal.

32-102 would require notification of the securities regulatory authority of reliance on the “permitted client” exemption, if applicable, including disclosure of the assets under management attributable to investors in the local jurisdiction. We would appreciate more details regarding the type of disclosure that would be required, bearing in mind that investors often do not want to be identified.

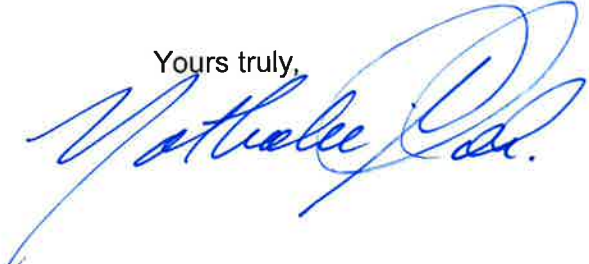
32-102 would also require notification to “permitted clients” and investors of the funds managed by international investment fund managers that are registered in a local jurisdiction, as applicable, of the investment fund managers’ non-resident status, together with other prescribed disclosure. We question the usefulness of these proposed investor notifications, and would appreciate more details around the rationale behind them.³

Please also consider the need for a sufficient transition period to allow the industry to prepare for the implementation of the final rules, especially if the dual approach to the registration of non-resident investment fund managers persists.

Finally, we ask that you consider whether compliance with substantially the same regulatory requirements in a foreign jurisdiction should obviate the need for registration as a non-resident investment fund manager in a local jurisdiction in Canada, or at least whether it should be viewed as a factor in the analysis of whether registration is required.

We appreciate the opportunity to participate in this stakeholder consultation. We would be pleased to answer any questions regarding our comments.

Yours truly,

A handwritten signature in blue ink, appearing to read "Y. Stohler" or similar, written in a cursive style.

³ We note that MP 31-202 would not require a registered investment fund manager whose head office is not in a jurisdiction to notify security holders of the fund it manages of its non-resident status. The rationale for this position is that investment fund managers do not have a relationship with the security holders of the funds they manage to make this notice necessary.