



**CPP
INVESTMENT
BOARD**

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April 10, 2012

Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Superintendent of Securities, Newfoundland and Labrador

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**RE: 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 (collectively the “Proposal”)**

Dear Sirs and Mesdames:

This submission is made by the Canada Pension Plan Investment Board (the “CPP Investment Board”) in reply to the request for comments on the Proposal published on February 10, 2012 by the Canadian Securities Administrators.

The CPP Investment Board is a professional investment management organization based in Toronto. As at December 31, 2011, the CPP Investment Board had assets of \$152.8 billion.

The CPP Investment Board commented on the prior proposal for registration of non-resident investment fund managers. We are pleased that the Canadian Securities Administrators have responded to one of our previous comments by removing the threshold requirements in order for an entity to rely on the exemption for investment fund managers.

We have learned that there are still issues that exist for many non-resident funds in which we are, or may in the future like to become, invested even if the non-resident fund permits only Canadian investors in the fund which are “permitted clients” within the meaning of National Instrument 31-103. As a result, we are concerned that the Proposal will affect our ability to continue to invest in these types of funds.

Partnering with world-class investment managers is central to our investment strategy and our ability to fulfill our mandate. Frequently, partnering involves investment by us in funds resident outside of Canada.

The issue under the Proposal concerns the proposed filing requirement to rely on the exemption from registration as an ‘investment fund manager’. A filing requires, by definition, an entity or person to identify themselves as the ‘investment fund manager’. As “investment fund manager” is defined in securities legislation as the party directing the business, operations or affairs of the fund, it implies that mind and management is located where such decisions are made. While in general, CPP Investment Board views these funds as the portfolio manager’s products, that is not necessarily the same as how the funds are legally structured for tax reasons.

Many groups, like CPP Investment Board, seek investment managers and funds around the world. Many global investment managers have responded to that challenge and offer products and services that can serve investors from varying jurisdictions around the world. In doing so, the key structural challenge for multi-jurisdictional offerings is tax. To avoid the fund being resident where the portfolio manager is resident, ‘mind and management’ is instead centred in the desired foreign jurisdiction. Those who enter into the necessary service provider contracts on behalf of the fund, whether it be a board of directors of the fund or a general partner, play a role that they would not equate to “investment fund manager” and more importantly, may be unwilling to accept the label as such.

An action that discourages foreign investment fund groups from making qualified Canadian investors aware of their product offerings through solicitation activities or in fact offering the funds to qualified Canadians on a private placement basis reduces the opportunity set for investment for groups like CPP Investment Board.

The filing contemplated by the Proposal required to rely on the exemption does not provide any substantive additional protection to permitted clients. In contrast, that step could cost us the ability to invest in particular funds. Many of these funds are designed with mandatory redemption features in them to avoid the very problem which could arise in this situation – the laws of one jurisdiction causing issues which could harm the fund and its other investors.

While CPP Investment Board supports good regulation and governance, as a practical matter, the approach for ‘exempt’ investment fund managers where investors are limited to “permitted clients” contemplated by MI 32-102 may not be viable in this context.

We also understand that Canadian investors in other provinces and territories of Canada that are not participating in MI 32-102 will not pose the same tax risk issue to many fund groups. We understand the proposal contained in Multilateral Policy 31-202 of the other provinces does not require any registration or filing unless the fund group carries on the activities of an investment fund manager from a physical place of business in one of those provinces and a statement is made in that proposal that solicitation of investors does not automatically require the investment fund manager to register.

We believe it would be very unfortunate for two divergent regimes to exist on the same topic in Canada generally and we do not want to find that CPP Investment Board, with offices in Ontario, is at a disadvantage from other similar large investors resident in provinces with a different regime.

To summarize, trying to graft a Canadian regulatory concept onto a structure with different structural demands can cause significant issues for Canadians wishing to invest with a fund group, without achieving any measurable protection for permitted clients.

We appreciate the opportunity to comment on the Proposal. Please do not hesitate to contact me (416.868.8559; ajeffery@cppib.ca) if you wish to discuss our comments.

Yours sincerely,

“Andrea Jeffery”

By: Andrea Jeffery
Manager, Law