

Toronto

April 11, 2012

Montréal

SENT BY ELECTRONIC MAIL

Ottawa

Calgary

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

New York

c/o

John Stevenson, Secretary
Ontario Securities
Commission
20 Queen Street West, Suite
1900, Box 55
Toronto, ON M5H3S8
jstevenson@osc.gov.on.ca

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
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

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

This letter is prepared in response to the request for comments for proposed Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers* (“**MI 31-102**”) and Companion Policy 32-102CP *Registration Exemptions for Non-Resident Investment Fund Managers* (“**32-102CP**”) (the “**Exemption-Based Proposal**”) published by the securities regulators in New Brunswick, Newfoundland and Labrador, Ontario and Québec (the “**Exemption-Based Jurisdictions**”). In connection with this response we have concurrently reviewed the separate proposed Multilateral Policy 31-202 *Registration Requirement for Investment Fund Managers* (the “**Policy-Based Proposal**”) published by the securities regulators in British Columbia, Alberta, Saskatchewan, Manitoba, Prince Edward Island, Nova Scotia, Northwest Territories, Yukon and Nunavut.

We are concerned that Canadian securities regulators have released two, substantially different and inconsistent proposals relating to the registration requirements of non-resident investment fund managers, based on two different interpretations of the requirements of provincial and territorial securities legislation and National Instrument 31-103 *Registration Requirements, Obligations and Ongoing Registrant Obligations*

(“**NI 31-103**”). This lack of harmonization adds unnecessary complication to the Canadian regulation of non-resident investment fund managers and we submit that it is not in the best interests of Canadian capital markets to do so. Such a divergent approach to the regulatory scheme is at odds with national registration reform (now in its third year of implementation) and the laudable harmonization objectives achieved to date through the adoption of other national instruments. We therefore respectfully encourage all members of the Canadian Securities Administrators to resolve the differences in their interpretation of the investment fund manager registration requirements and develop one, harmonized proposal for the regulation of non-resident investment fund managers.

At this time, we do not have comments on the Policy-Based Proposal. We do have the following comments on the Exemption-Based Proposal:

1. **Connection to the Jurisdiction**

We are concerned with the lack of clarity surrounding what activities, aside from the distribution of securities in the local jurisdiction, have the potential to trigger the requirement for non-resident investment fund managers to register in the Exemption-Based Jurisdiction. 32-102CP provides that the distribution of securities triggers the registration requirement but does not provide any discussion of what other activities might also trigger it. The inclusion of the exemption in Section 3 of MI 32-102 where there is no solicitation (the “**No Solicitation Exemption**”) would suggest that solicitation may, by itself, trigger the requirement to register; otherwise, there would be no clear reason for the exemption. Without more clarity, it seems logical to conclude that a non-resident investment fund manager must register in a jurisdiction where there is any connection between the non-resident investment fund manager and the jurisdiction, including having or soliciting investors there, unless the manager is entitled to rely on the No Solicitation Exemption or the permitted client exemption in Section 4 of MI 32-102 (the “**Permitted Client Exemption**”). For example, based on the current wording of the Exemption-Based Proposal, it would appear that a non-resident investment fund manager is required to register in an Exemption-Based Jurisdiction if it engages in direct communication with residents of the local jurisdiction to encourage their purchases of an investment fund's securities (one of the examples of “active solicitation”), even if residents do not ultimately purchase any securities of the investment fund. It is also not clear what activities would trigger the registration requirement in such a way that reliance on the exemption in Section 3 of MI 32-102 where there are no security holders would be necessary.

2. **Permitted Client Exemption**

As currently proposed, a non-resident investment fund manager of any investment fund having existing investors in the Exemption-Based Jurisdictions who do not qualify as “permitted clients” may need to redeem the investments of those investors prior to December 31, 2012, in order for the manager to avoid becoming subject to the registration requirement. We respectfully submit that this result would be unfair to investors in the Exemption-Based Jurisdictions, and that non-resident investment fund managers should be permitted to rely on the Permitted Client Exemption after December 31, 2012 without the need to confirm whether existing investors resident in the Exemption-Based Jurisdictions are, in fact, “permitted clients” (in effect, grandfathering the investment fund manager with respect to those investors).

3. **Form 32-102F2 Notice of Regulatory Action (“Form 32-102F2”)**

Under the Exemption-Based Proposal, a firm seeking to rely on the Permitted Client Exemption would be required to file a completed Form 32-102F2 within 10 days of the date on which that firm began relying on that exemption and notify securities regulators of any change to information previously filed on Form 32-102F2 within 10 days of the change. This requirement mirrors the disclosure obligations in Parts 7 and 8 of Form 33-109F6 *Firm Registration* for registered firms. However, this requirement is inconsistent with the significantly more limited initial and ongoing reporting obligations of firms that rely on the international dealer exemption (“IDE”) in Section 8.18 of NI 31-103 or the international adviser exemption (“IAE”) in Section 8.26 of NI 31-103. We respectfully submit that a firm relying on the Permitted Client Exemption should not be subject to any more onerous reporting or other obligations than a firm relying on the IDE or IAE. Firms relying on the Permitted Client Exemption, like those relying upon the IDE and IAE, will be exempt from registration and we do not believe it should be necessary, from a policy perspective, to subject them to the same requirements as registered firms. Furthermore, we respectfully submit that it would be unduly onerous to require a firm that relies on the Permitted Client Exemption to file, and continually update, the disclosure required on Form 32-102F2, just as Canadian securities regulators have already concluded that it would be unduly onerous to require a firm relying on the IDE or IAE to satisfy such requirements. We are concerned that some non-resident investment fund managers may simply prohibit investors located in the Exemption-Based Jurisdictions from investing in their funds so as to avoid becoming subject to the Form 32-102F2 reporting requirements, depriving “permitted client” investors in those provinces from access to their desired investment opportunities. We respectfully submit that investor protection concerns would not be served, and

that the interests of “permitted clients” may be harmed, by requiring firms relying on the Permitted Client Exemption to file, and continually update, the disclosure required on Form 32-102F2.

We thank you for the opportunity to provide our comments on the Exemption-Based Proposal. If you have any questions or comments please contact Linda Currie at (416) 862-6600, John Black at (416) 862-6586, Rob Lando at (212) 991-2504, or Blair Wiley at (416) 862-5989.

Yours very truly,

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP