

**Notice of and Request for Comment on  
Proposed Multilateral Policy 31-202 *Registration Requirement for Investment Fund  
Managers***

**Registration Requirement for Investment Fund Managers**

**February 10, 2012**

**1. Introduction**

Proposed Multilateral Policy 31-202 *Registration Requirement for Investment Fund Managers* (the Multilateral Policy) is being published for a 60-day comment period. The proposed multilateral policy is expected to be implemented in the following jurisdictions:

British Columbia  
Alberta  
Saskatchewan  
Manitoba  
Prince Edward Island  
Nova Scotia  
Northwest Territories  
Yukon  
Nunavut

**2. Substance and Purpose**

On October 15, 2010, the Canadian Securities Administrators (CSA) published a proposal for comment setting out the circumstances in which non-resident investment fund managers would need to register (the October 2010 Proposal). In response to the comments received on the October 2010 Proposal, and after further consideration by the CSA we are not proceeding with the amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and its companion policy that were set out in the October 2010 Proposal.

Securities regulators in British Columbia, Alberta, Saskatchewan, Manitoba, Prince Edward Island, Nova Scotia, Northwest Territories, Yukon and Nunavut are now proposing Multilateral Policy 31-202, which provides guidance on when an investment fund manager needs to register in our jurisdictions.

Please note that the securities regulators in Ontario, Quebec, New Brunswick and Newfoundland and Labrador, are publishing a multilateral instrument and multilateral companion policy, relating to the investment fund manager registration requirement in their jurisdictions.

**3. Contents of this Notice**

This notice contains the following annexes:

- Annex A – Summary of comments and responses to the October 2010 Proposal

- Annex B – Proposed Multilateral Policy 31-202 *Registration Requirement for Investment Fund Managers*
- Annex C – Proposed Amendments to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

#### **4. Background**

##### *Summary of the October 2010 Proposal*

The October 2010 Proposal related to the registration requirement for non-resident investment fund managers, namely:

- international investment fund managers without a head office in Canada; and
- domestic investment fund managers with a head office in one jurisdiction of Canada who also carry out investment fund manager activities in another jurisdiction of Canada.

The October 2010 Proposal provided that a non-resident investment fund manager would be required to register in a jurisdiction if

- (i) the investment fund has security holders resident in that jurisdiction, and
- (ii) the investment fund manager or the investment fund actively solicited the purchase of the fund's securities by residents in that jurisdiction.

The October 2010 Proposal also provided for two exemptions from the requirement to register as an investment fund manager, as described in more detail below.

##### *Summary of comments received by the CSA*

The CSA received 24 comment letters on the October 2010 Proposal. The comments were extremely helpful in the development of the Multilateral Policy. Copies of the comment letters are available on the British Columbia Securities Commission website: [www.bcsc.bc.ca](http://www.bcsc.bc.ca).

A summary of the comments, together with our responses, is contained in Annex A to this notice.

#### **5. Summary of key changes**

##### *General principles*

We propose new guidance in the Multilateral Policy regarding the general principles that apply to determining whether an entity is required to register as an investment fund manager, including guidance on the types of activities that investment fund managers typically conduct.

### *Changes to the application of the registration requirement*

We think that the correct starting point for the interpretation of the investment fund manager registration requirement is the specific authority under each of our respective securities legislation.

Securities legislation provides that unless registered, an entity must not act as an investment fund manager. The legislation defines an “investment fund manager” as an entity that directs or manages the business, operations or affairs of an investment fund. Accordingly, an investment fund manager would only be required to register in a jurisdiction if it directs or manages the business, operations or affairs of the investment fund in that jurisdiction. We interpret directing or managing the business, operations or affairs of an investment fund to encompass oversight and direction of the fund, which establish a real and substantial connection to the jurisdiction. This does not require the investment fund manager to be physically present in the jurisdiction. What it does require is for the activities to take place in the jurisdiction.

As set out in the proposed Multilateral Policy, an entity is required to register as an investment fund manager in a jurisdiction if it directs or manages the business, operations or affairs of an investment in that jurisdiction. In determining if registration is required, the entity should consider what activities are taking place in these jurisdictions, including those functions and activities listed in the Multilateral Policy. We would not expect that any single function or activity would be determinative. Specifically, unlike the October 2010 Proposal, the presence of security holders and the solicitation of investors in a jurisdiction does not automatically require an investment fund manager to register.

### *Removal of exemptions from the investment fund manager registration requirement*

The October 2010 Proposal included two exemptions from the investment fund manager registration requirement:

- Investment fund managers without a physical place of business in Canada were exempt from the investment fund manager registration requirement if the Canadian distribution of the fund’s securities was restricted to permitted clients.
- If the investment fund manager or the fund ceased to actively solicit residents in a jurisdiction after the coming into force of the October 2010 Proposal they were exempt from the investment fund manager registration requirement.

We are no longer providing these exemptions. As we now interpret the investment fund manager registration requirement more narrowly, and specifically do not require registration based on the mere presence of security holders and solicitation of investors, we think that in most cases these exemptions are no longer necessary. However, if an entity is required to register under our narrower interpretation of the registration requirement, we do not think it is appropriate that they be exempt on the basis that the fund they manage only distributes to permitted clients or that neither investment fund manager nor the fund continues to actively solicit residents in the jurisdiction.

## *Notice to investors by non-resident investment fund managers*

We no longer 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. Based on our revised interpretation of the registration requirement, an investment fund manager will only need to register in a jurisdiction if it directs or manages the business, operations or affairs of an investment in that jurisdiction and accordingly, we would not expect many registered investment fund managers would be non-resident. Also, we do not think that investment fund managers have a relationship with the security holders of the funds they manage that make this notice necessary.

### **6. Transition**

NI 31-103 provides temporary exemptions from the registration requirement for investment fund managers registered in the jurisdiction of Canada in which their head office is located and investment fund managers that do not have a head office in Canada. These temporary exemptions expire on September 28, 2012. We plan to issue parallel orders so that investment fund managers will not need to register by September 28, 2012; they will only need to apply for registration by that date.

We expect to implement the Multilateral Policy on the expiry date of these existing temporary exemptions. Accordingly, we strongly encourage investment fund managers to determine in advance whether they will need to apply for registration by September 28, 2012.

### **7. Request for comments**

Please submit your comments in writing on or before April 10, 2012. If you are not sending your comments by e-mail, send a CD containing the submissions (in Microsoft Word format).

Address your submissions to the following:

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission  
The Manitoba Securities Commission  
Registrar of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Registrar of Securities, Northwest Territories  
Superintendent of Securities, Yukon  
Registrar of Securities, Nunavut

Deliver your comments **only** to the address below. Your comments will be distributed to the other participating CSA members.

Lindy Bremner  
British Columbia Securities Commission

701 West Georgia Street  
P.O. Box 10142, Pacific Centre  
Vancouver, B.C. V7Y 1L2  
E-mail: [lbremner@bcsc.bc.ca](mailto:lbremner@bcsc.bc.ca)

We plan to post all submission letters on the British Columbia Securities Commission website at [www.bcsc.bc.ca](http://www.bcsc.bc.ca).

We cannot keep submissions confidential because securities legislation in certain jurisdictions requires publication of a summary of the written comments received during the comment period.

## **9. Questions**

Please refer your questions to any of the following CSA staff:

Lindy Bremner  
Senior Legal Counsel, Capital Markets Regulation  
British Columbia Securities Commission  
Tel: 604-899-6678  
Fax: 1-800-373-6393  
[lbremner@bcsc.bc.ca](mailto:lbremner@bcsc.bc.ca)

Navdeep Gill  
Manager, Registration  
Alberta Securities Commission  
Tel: 403-355-9043  
[navdeep.gill@asc.ca](mailto:navdeep.gill@asc.ca)

Dean Murrison  
Deputy Director, Legal and Registration  
Saskatchewan Financial Services Commission  
Tel: 306-787-5879  
[dean.murrison@gov.sk.ca](mailto:dean.murrison@gov.sk.ca)

Chris Besko  
Legal Counsel, Deputy Director  
The Manitoba Securities Commission  
Tel. 204-945-2561  
Toll Free (Manitoba only) 1-800-655-5244  
[chris.besko@gov.mb.ca](mailto:chris.besko@gov.mb.ca)

Katharine Tummon  
Superintendent of Securities  
Prince Edward Island Securities Office  
Tel: 902-368-4542  
[kptummon@gov.pe.ca](mailto:kptummon@gov.pe.ca)

Brian W. Murphy  
Deputy Director, Capital Markets  
Nova Scotia Securities Commission  
Tel: 902-424-4592  
[murphybw@gov.ns.ca](mailto:murphybw@gov.ns.ca)

Donn MacDougall  
Deputy Superintendent, Legal & Enforcement  
Office of the Superintendent of Securities  
Government of the Northwest Territories  
Tel: 867-920-8984  
[donald\\_macdougall@gov.nt.ca](mailto:donald_macdougall@gov.nt.ca)

Frederik J. Pretorius  
Manager Corporate Affairs (C-6)  
Dept of Community Services  
Government of Yukon  
Tel: 867-667-5225  
[Fred.Pretorius@gov.yk.ca](mailto:Fred.Pretorius@gov.yk.ca)

Louis Arki, Director, Legal Registries  
Department of Justice, Government of Nunavut  
Tel: 867-975-6587  
[larki@gov.nu.ca](mailto:larki@gov.nu.ca)