

MULTILATERAL INSTRUMENT 32-102

REGISTRATION EXEMPTIONS FOR NON-RESIDENT

INVESTMENT FUND MANAGERS

Part 1 Definitions and application

Definitions

1. In this Instrument, "permitted client" has the same meaning as in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, except that it excludes paragraph (m) and (n) and includes a registered charity under the *Income Tax Act* (Canada) that obtains advice on the securities to be traded from an eligibility adviser, as defined in section 1.1 of NI 45-106 *Prospectus and Registration Exemptions*, or an adviser registered under the securities legislation of the jurisdiction of the registered charity.

Application of this Instrument

2. This Instrument applies in Ontario, Québec and Newfoundland and Labrador.

Part 2 Exemptions from investment fund manager registration

No security holders or active solicitation in the local jurisdiction

3. The investment fund manager registration requirement does not apply to a person or company acting as an investment fund manager of one or more investment funds if it does not have a place of business in the local jurisdiction and if one or more of the following apply:

- (a) none of the investment funds has security holders resident in the local jurisdiction;
- (b) the person or company and those investment funds have not, at any time after September 27, 2012, actively solicited residents in the local jurisdiction to purchase securities of the fund.

Permitted clients

4.

(1) The investment fund manager registration requirement does not apply to a person or company acting as an investment fund manager of one or more investment funds if all securities of the investment funds distributed in the local jurisdiction were distributed under an exemption from the prospectus requirement to a permitted client.

(2) The exemption in subsection (1) is not available unless all of the following apply:

- (a) the investment fund manager does not have its head office or its principal place of business in Canada;
- (b) the investment fund manager is incorporated, formed or created under the laws of a foreign jurisdiction;
- (c) none of the investment funds is a reporting issuer in any jurisdiction of Canada;
- (d) the investment fund manager has submitted to the securities regulatory authority in the local jurisdiction a completed Form 32-102F1 *Submission to Jurisdiction and Appointment of Agent for Service for International Investment Fund Manager*;
- (e) the investment fund manager has notified the permitted client in writing of all of the following:
 - (i) the investment fund manager is not registered in the local jurisdiction to act as an investment fund manager;

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- (ii) the foreign jurisdiction in which the head office or principal place of business of the investment fund manager is located;
 - (iii) all or substantially all of the assets of the investment fund manager may be situated outside of Canada;
 - (iv) there may be difficulty enforcing legal rights against the investment fund manager because of the above;
 - (v) the name and address of the agent for service of process of the investment fund manager in the local jurisdiction.
- (3) A person or company that relied on the exemption in subsection (1) during the 12 month period preceding December 1 of a year must notify the securities regulatory authority in the local jurisdiction, by December 1 of that year, of the following:
- (a) the fact that it relied upon the exemption in subsection (1);
 - (b) for all investment funds for which it acts as an investment fund manager, the total assets under management expressed in Canadian dollars, attributable to securities beneficially owned by residents of the local jurisdiction as at the most recently completed month.
- (4) A person or company relying on the exemption in subsection (1) must file with the securities regulatory authority in the local jurisdiction, a completed Form 32-102F2 *Notice of Regulatory Action* within 10 days of the date on which that person or company began relying on that exemption.
- (5) A person or company must notify the securities regulatory authority in the local jurisdiction, of any change to the information previously submitted in Form 32-102F2 *Notice of Regulatory Action* under subsection (4) within 10 days of the change.

Part 3 Notice to investors by international investment fund managers

Contents of the notice

5. A registered investment fund manager whose head office or principal place of business is not located in Canada must provide or cause to be provided, to security holders with an address of record in the local jurisdiction on the records of each investment fund in respect of which the investment fund manager acts as an investment fund manager, a statement in writing disclosing the following:
- (a) the investment fund manager is not resident in the local jurisdiction;
 - (b) the foreign jurisdiction in which the head office or the principal place of business of the investment fund manager is located;
 - (c) all or substantially all of the assets of the investment fund manager may be situated outside of Canada;
 - (d) there may be difficulty enforcing legal rights against the investment fund manager because of the above;
 - (e) the name and address of the agent for service of process of the investment fund manager in the local jurisdiction.

Part 4 Granting an exemption

Who can grant an exemption

6.

- (1) The regulator, except in Québec, or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

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(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the jurisdiction.

Part 5 When this Instrument comes into force

Effective date

7.

(1) Except as set out in subsection (2), this Instrument comes into force on September 28, 2012.

(2) Section 5 comes into force on March 31, 2013.

FORM 32-102F1 SUBMISSION TO JURISDICTION AND

APPOINTMENT OF AGENT FOR SERVICE FOR INTERNATIONAL INVESTMENT FUND MANAGER

(section 4 [permitted clients])

1. Name of person or company ("International Firm"):

2. If the International Firm was previously assigned an NRD number as a registered investment fund manager or an unregistered exempt international firm, provide the NRD number of the firm.

3. Jurisdiction of incorporation of the International Firm:

4. Address of head office or principal place of business of the International Firm:

5. The name, e-mail address, phone number and fax number of the International Firm's chief compliance officer.

Name:

E-mail address:

Phone:

Fax:

6. Name of agent for service of process (the "Agent for Service"):

7. Address for service of process on the Agent for Service:

8. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

9. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

10. Until 6 years after the International Firm ceases to rely on section 4 *[permitted clients]*, the International Firm must submit to the securities regulatory authority

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a. a new *Submission to Jurisdiction and Appointment of Agent for Service for International Investment Fund Manager* in this form no later than the 30th day before the date this *Submission to Jurisdiction and Appointment of Agent for Service for International Investment Fund Manager* is terminated; and

b. an amended *Submission to Jurisdiction and Appointment of Agent for Service for International Investment Fund Manager* no later than the 30th day before any change in the name or above address of the Agent for Service.

11. This *Submission to Jurisdiction and Appointment of Agent for Service for International Investment Fund Manager* is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

(Signature of the International Firm or authorized signatory)

(Name and Title of authorized signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of (Insert name of International Firm) under the terms and conditions of the foregoing *Submission to Jurisdiction and Appointment of Agent for Service for International Investment Fund Manager*.

Dated: _____

(Signature of Agent for Service or authorized signatory)

(Name and Title of authorized signatory)

FORM 32-102F2 NOTICE OF REGULATORY ACTION

(section 4 [permitted clients])

Definitions

Parent-- a person or company that directly or indirectly has significant control of another person or company.

Significant control -- a person or company has significant control of another person or company if the person or company:

- directly or indirectly holds voting securities representing more than 20 per cent of the outstanding voting rights attached to all outstanding voting securities of the other person or company, or
- directly or indirectly is able to elect or appoint a majority of the directors (or individuals performing similar functions or occupying similar positions) of the other person or company.

Specified affiliate -- a person or company that is a parent of a firm, a specified subsidiary of a firm, or a specified subsidiary of a firm's parent.

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Specified subsidiary -- a person or company of which another person or company has significant control.

All of the questions below apply to any jurisdiction and any foreign jurisdiction. The information must be provided in respect of the last 7 years.

1. Has the firm, or any predecessors or specified affiliates of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, self-regulatory organization (SRO) or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

Yes _____ No _____

If yes, provide the following information for each settlement agreement:

Name of entity

Regulator/organization

Date of settlement (yyyy/mm/dd)

Details of settlement

Jurisdiction

2. Has any financial services regulator, securities or derivatives exchange, SRO or similar organization:

Yes No

(a) Determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?

(b) Determined that the firm, or any predecessors or specified affiliates of the firm made a false statement or omission?

(c) Issued a warning or requested an undertaking by the firm, or any predecessors or specified affiliates of the firm?

(d) Suspended or terminated any registration, licensing or membership of the firm, or any predecessors or specified affiliates of the firm?

(e) Imposed terms or conditions on any registration or membership of the firm, or predecessors or specified affiliates of the firm?

(f) Conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?

(g) Issued an order (other than an exemption order) or a sanction to the firm, or any predecessors or specified affiliates of the firm for securities

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or derivatives-related activity (e.g. cease trade order)?

If yes, provide the following information for each action:

Name of Entity

Type of Action

Regulator/organization

Date of action (yyyy/mm/dd)

Reason for action

Jurisdiction

3. Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliates is the subject?

Yes _____ No _____

If yes, provide the following information for each investigation:

Name of entity

Reason or purpose of investigation

Regulator/organization

Date investigation commenced (yyyy/mm/dd)

Jurisdiction

Name of firm

Name of firm's authorized signing officer or partner

Title of firm's authorized signing officer or partner

Signature

Date (yyyy/mm/dd)

Witness

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness

Title of witness

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Signature

Date (yyyy/mm/dd)

COMPANION POLICY 32-102CP

REGISTRATION EXEMPTIONS FOR NON-RESIDENT

INVESTMENT FUND MANAGERS

Part 1 Fundamental concepts

Introduction

Purpose of this Companion Policy

This Companion Policy sets out how the Ontario Securities Commission, the Autorité des marchés financiers and the Financial Services Regulation Division, Service NL, Government of Newfoundland and Labrador (collectively, we) interpret or apply the provisions of Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Managers* (MI 32-102) and related securities legislation.

MI 32-102 applies in Ontario, Québec and Newfoundland and Labrador.

Appendix A contains a chart illustrating the requirement to register as an investment fund manager for those investment fund managers who are non-residents, as well as the availability of the exemptions provided in MI 32-102.

Numbering system

Except for Part 1, the numbering of Parts and sections in this Companion Policy correspond to the numbering in MI 32-102. Any general guidance for a Part appears immediately after the name of the Part. Any specific guidance on sections in MI 32-102 follows any general guidance. If there is no guidance for a Part or section, the numbering in this Companion Policy will skip to the next provision that does have guidance.

All references in this Companion Policy to sections and Parts are to MI 32-102, unless otherwise noted.

Definitions

Unless defined in MI 32-102, terms used in MI 32-102 and in this Companion Policy have the meaning given to them in the securities legislation of each jurisdiction or in National Instrument 14-101 *Definitions*.

In this Companion Policy "regulator" means the regulator or securities regulatory authority in a jurisdiction.

This guidance applies to investment fund managers

- that do not have their head office or their principal place of business in a jurisdiction of Canada (international investment fund managers); and
- that are domestic investment fund managers which do not have a place of business in the local jurisdiction (domestic non-resident investment fund managers).

We refer to international and domestic non-resident investment fund managers, collectively, as non-resident investment fund managers.

Requirement to register as an investment fund manager

An investment fund manager is required to register if it directs or manages the business, operations or affairs of one or more investment funds. Some of the functions and activities that an investment fund manager directs, manages or performs include:

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- establishing a distribution channel for the fund
- marketing the fund
- establishing and overseeing the fund's compliance and risk management programs
- overseeing the day-to-day administration of the fund
- retaining and liaising with the portfolio manager, the custodian, the dealers and other service providers of the fund
- overseeing advisers' compliance with investment objectives and overall performance of the fund
- preparing the fund's prospectus or other offering documents
- preparing and delivering security holder reports
- identifying, addressing and disclosing conflicts of interest
- calculating the net asset value (NAV) of the fund and the NAV per share or unit
- calculating, confirming and arranging payment of subscriptions and redemptions, and arranging for the payment of dividends or other distributions, if required

Where to register as an investment fund manager

(a) Investment fund managers with a place of business in the local jurisdiction

An investment fund manager is required to register in the local jurisdiction if it directs or manages the business, operations or affairs of one or more investment funds from a place of business in that jurisdiction.

(b) Non-resident investment fund managers

Triggering registration in the case of non-resident investment fund managers in a local jurisdiction depends on whether

- (i) the person or company acts as an investment fund manager; and
- (ii) that manager is managing one or more investment funds that distribute or have distributed securities to residents of the local jurisdiction

To the extent the person or company is acting as an investment fund manager, the next question is whether the non-resident investment fund manager is managing one or more investment funds that have distributed securities to residents in the local jurisdiction.

If one or more of the investment funds managed by the investment fund manager have security holders in the local jurisdiction, this gives rise to investment fund management activities in such jurisdiction, including activities reflecting the relationship between the fund, the investment fund manager (who is responsible for directing those activities), and the security holders. Such activities include the delivery of financial statements and other periodic reporting, calculating net asset values and fulfilling redemption and dividend payment obligations.

Whether or not the distribution process is continuous, by way of a prospectus or under a prospectus exemption, is not relevant to this connecting factor, since the investment fund is an issuer over which the regulator in the local jurisdiction has authority. The actual distribution of the investment fund's securities is subject to dealer registration and prospectus requirements.

It is the fact that there has been a distribution to holders in the local jurisdiction, and not how the distribution was carried out, that connects the non-resident investment fund manager to the jurisdiction in the regulatory perspective of investor protection. Investors in investment funds managed by non-resident investment fund managers face the same risks as those who invest in local investment funds.

Part 2 Exemptions from investment fund manager registration

3. No security holders or active solicitation

General

Generally, a non-resident investment fund manager will not be required to register if:

- the investment fund no longer has security holders in the local jurisdiction, notwithstanding a distribution of securities in the past;
- the investment fund has security holders in the local jurisdiction but has not actively solicited residents in the local jurisdiction after the coming into the force of MI 32-102;
- the security holders are permitted clients.

Conditions of the exemption

An investment fund manager that does not have a place of business in the local jurisdiction is exempt from the investment fund manager registration requirement if there are no security holders of any of the investment funds managed by it who are resident in that jurisdiction or there is no active solicitation by the investment fund manager or any of the investment funds in that jurisdiction.

Active solicitation

One of the conditions of this exemption is that the investment fund manager and the investment funds it manages have not, after September 27, 2012, actively solicited the purchase of the funds' securities by residents in the local jurisdiction. Active solicitation refers to intentional actions taken by the investment fund or the investment fund manager to encourage a purchase of the fund's securities, such as pro-active, targeted actions or communications that are initiated by an investment fund manager for the purpose of soliciting an investment.

Actions that are undertaken by an investment fund manager at the request of, or in response to, an existing or prospective investor who initiates contact with the investment fund manager would not constitute active solicitation.

Examples of active solicitation include:

- direct communication with residents of the local jurisdiction to encourage their purchases of the investment fund's securities
- advertising in Canadian or international publications or media (including the Internet), if the advertising is intended to encourage the purchase of the investment fund's securities by residents of the local jurisdiction (either directly from the fund or in the secondary/resale market)
- purchase recommendations being made by a third party to residents of the local jurisdiction, if that party is entitled to be compensated by the investment fund or the investment fund manager, for the recommendation itself, or for a subsequent purchase of fund securities by residents of the local jurisdiction in response to the recommendation.

Active solicitation would not include:

- advertising in Canadian or international publications or media (including the Internet) only to promote the image or general perception of an investment fund

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- responding to unsolicited enquiries from prospective investors in the local jurisdiction
- the solicitation of a prospective investor that is only temporarily in the local jurisdiction, such as in the case where a resident from another jurisdiction is vacationing in the local jurisdiction.

4. Permitted clients

An investment fund manager that does not have its head office or its principal place of business in Canada is exempt from the investment fund manager registration requirement if the outstanding securities of its investment funds have been distributed in the local jurisdiction to permitted clients only and certain other conditions set out in subsection 4(2) are satisfied.

If an investment fund manager is relying on the exemption, it must provide an initial notice by filing a Form 32-102F1 *Submission to Jurisdiction and Appointment of Agent for Service for International Investment Fund Manager* (Form 32-102F1) with the regulator in the local jurisdiction. If there is any change to the information in the investment fund manager's Form 32-102F1, the investment fund manager must update it by filing a replacement Form 32-102F1 with the regulator in the local jurisdiction. So long as the investment fund manager continues to rely on the exemption, it must file an annual notice with the regulator in the local jurisdiction. Subsection 4(3) does not prescribe a form of annual notice. An e-mail or letter will therefore be acceptable.

APPENDIX A -- chart illustrating the non-resident investment fund manager registration requirement and the availability of exemptions

The following chart illustrates the requirement to register as an investment fund manager for those investment fund managers who are non-residents, as well as the availability of the exemptions provided in MI 32-102.

Is the person acting as an investment fund manager?

To respond, consider the following functions and activities

- establishing a distribution channel for the fund
- marketing the fund
- establishing and overseeing the fund's compliance and risk management programs
- overseeing the day-to-day administration of the fund
- retaining and liaising with the portfolio manager, the custodian, the dealers and other service providers of the fund
- overseeing advisers' compliance with investment objectives and overall performance of the fund
- preparing the fund's prospectus or other offering documents
- preparing and delivering security holder reports
- identifying, addressing and disclosing conflicts of interest
- calculating the net asset value (NAV) of the fund and the NAV per share or unit

- calculating, confirming and arranging payment of subscriptions and redemptions, and arranging for the payment of dividends or other distributions, if required

If not an investment fund manager = registration is not required

If an investment fund manager, has the fund distributed securities in the local jurisdiction?

