

**Ontario Securities Commission**

**Multilateral Instrument 32-102**

**Unofficial consolidation current to 2015-05-05.**

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**MULTILATERAL INSTRUMENT 32-102**

***REGISTRATION EXEMPTIONS FOR NON-RESIDENT INVESTMENT FUND MANAGERS***

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## **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 National Instrument 45-106 *Prospectus 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;
  - (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.

**(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.