



Fidae Abbas
Director, Compliance

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British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, ON M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Dear Sirs / Madames:

**RE: Proposed Amendments to NI 31-103 Registration Requirement and Exemptions –
Registration of International and Certain Domestic Investment Fund Managers**

Thank you for the opportunity to provide comments to the Canadian Securities Administrators ("CSA") Notice of Proposed Amendments to National Instrument 31-103 *Registration Requirements and Exemptions* ("NI 31-103") and to Companion Policy 31-103 *Registration Requirement and Exemptions* ("Companion Policy 31-103CP") related to the registration of international and certain domestic investment fund managers.

Fidelity Investments Canada ULC is the 6th largest fund management company in Canada and part of the Fidelity Investments organization in Boston, one of the world's largest financial services providers. In Canada, Fidelity manages a total of \$64 billion in mutual funds and

institutional assets. It offers approximately 140 mutual funds or pooled funds to Canadian investors.

1. Domestic Investment Fund Manager

In addition to its principal jurisdiction, the CSA is proposing registration for Canadian investment fund managers in each province and territory:

- i. where residents of that province or territory are securityholders of the investment funds, or
- ii. the Canadian investment fund manager or the investment funds it manages have actively solicited residents to purchase securities of the funds.

Fidelity has concerns with this proposal for the following reasons:

(a) Investment Fund Manager Category

The CSA has indicated that the investment fund manager category is intended to ensure that investment fund managers have sufficient proficiency, integrity and solvency to adequately carry out their functions.

Fidelity does not believe that registration outside of the investment fund manager's principal jurisdiction will assist in achieving the objectives outlined above. With respect to proficiency and integrity, an investment fund manager would have already registered its Chief Compliance Officer and Ultimate Designated Person in its principal jurisdiction. In addition, the firm would continue to be subject to the capital and financial reporting requirements of its principal jurisdiction. As such, it is not clear how investor protection is enhanced by requiring a fund manager to register in additional jurisdictions.

(b) Investment Fund Manager Activities

Fidelity believes that an investment fund manager should not be required to register in a province or territory based upon the residency of security holders, or if an investment fund has actively solicited local residents to purchase its funds. Rather, it would be more reasonable to require a fund manager to be registered in a jurisdiction where it actually directs or manages the physical business, operations or affairs of an investment fund. Again, it is not clear how investor protection is enhanced by requiring a fund manager to register in a jurisdiction in which it does not carry out fund manager activities.

(c) Registration Fees

The CSA has indicated that investment fund managers can rely on the passport system for registration applications in Canada. Fidelity appreciates the administrative efficiencies associated with the passport system. In our view, registration in additional jurisdictions will result in increased registration fees for the firm without significantly adding to the regulatory oversight of registrants. We also expect to be subject to greater regulatory burden through filings, audit and oversight which we view as duplicative and unnecessary.

(d) Anticipated Costs and Benefits

The CSA expects that “the proposed amendments will make the Rule and the Companion Policy and the ongoing requirements more targeted, to the benefit of registrants and the investors they serve.”¹ As outlined above, we are concerned that the anticipated costs have not been fully taken into account. We note that pursuant to clause 143.2(2)7 of the Ontario Securities Act, a description of the anticipated costs and benefits of a proposed rule are to be published with the notice of every proposed rule. We do not believe that the Notice meets this statutory requirement. Without the provision of further analysis, we do not see how the Proposal relating to domestic investment fund managers will result in any of the expected benefits stated by the CSA in the Notice.

2. International Investment Fund Managers

The CSA is proposing to require registration by an international investment fund manager in each province and territory where residents of that province or territory are securityholders of the investment funds, or the investment fund manager or the investment funds it manages have actively solicited residents to purchase securities of the funds.

The CSA is also proposing exemptions to the registration requirements, where the investment fund is only distributed to permitted clients as defined in section 1.1 of NI 31-103, and other conditions are met.

Fidelity believes that the proposed conditions that limit the fair value of the assets of any fund, and the total assets of all funds managed by the investment fund manager that are attributable to Canadian security holders, are inconsistent with the concept of permitted clients under NI 31-103. It would not be uncommon for a permitted client’s investment with an international fund manager to exceed one or both of the proposed investment limits and it would therefore be impractical for investment fund managers to rely on this exemption. In short, the conditions are overly restrictive and would only be used in extremely narrow circumstances. The result would be that most international investment fund managers that have Canadian clients would have to become registered in Canada.

In our view, the result of these requirements is that it will significantly reduce the opportunity for Canadian investors to invest their assets with international managers. It is quite possible that many international managers will not feel that it is worth the time, cost and resources to maintain a Canadian registration where Canadian investors represent a relatively small amount of their assets under management. This will deprive Canadians of the opportunity to diversify their investments and very likely deprive them of the choice of investing with highly regarded non-Canadian investment organizations.

From our own organization’s perspective, we are concerned that this registration requirement will limit our international affiliates’ ability to offer investment funds to permitted clients.

Fidelity recommends that the CSA exempt international fund managers from the requirement to register in a Canadian jurisdiction where the security holders in the investment fund are

¹ Notice and Request for Comment - Proposed National Instrument 31-103 *Registration Requirements and Exemptions* (October 15, 2010).

permitted clients. This will allow sophisticated Canadian investors to continue to access world-class investment managers on an international level.

3. Notice to Clients by Non-Resident Investment Fund Managers

The CSA is proposing a new requirement that all international and domestic investment fund managers provide a notice to investors informing them of their non-resident status, as well as the risk that investors may not be able to enforce legal rights in the local jurisdiction. Fidelity does not object to the notice requirement for non-resident international investment fund managers. However, we believe that this requirement is not relevant for domestic non-resident investment fund managers. Given the principle of reciprocal enforcement between Canadian jurisdictions, we would argue that the notice requirement is not appropriate to domestic investment fund managers regardless of whether the manager does or does not have a physical place of business in the jurisdiction. As such, Fidelity recommends that the CSA consider removing the requirement for a domestic investment fund managers to provide notice to clients informing them of its non-resident status.

4. National Securities Regulator

Canada is the only country in the industrialized world that does not have a national securities regulator: Instead we have 10 provinces and three territories performing essentially the same regulatory roles. The current situation, with 13 regulators, produces overlap and duplication, which makes it very complicated and expensive for investors. As Canada moves closer to implementing a single national regulator, requiring investment fund managers to register in multiple jurisdictions would be contrary to the concept and spirit of one national regulatory body. A national securities regulator would provide investment fund managers a single set of rules and regulations, overseen by a single entity and be subject to one set of fees.

We thank you for the opportunity to comment on the proposed amendments. As always, we are more than willing to meet with you to discuss any of our comments.

Yours truly,



Fidae Abbas
Director, Compliance

c.c. Rob Strickland, President
Sian Burgess, Senior Vice President, Head of Legal and Compliance, Canada