

5.1 Rules and Policies

5.1 OSC Rule 35-502 - Non-Resident Advisers

("Policy 4.8") now the Rule *In the Matter of Certain Advisers* (1997), 20 OSCB 1217, as amended by (1998), 21 O.S.C.B. 6432 and (1999), 22 O.S.C.B. 6296.

NOTICE OF RULE UNDER THE SECURITIES ACT

RULE 35-502 NON-RESIDENT ADVISERS AND AMENDMENT OF REGULATIONS

Notice of Rule

The Commission has, under section 143 of the *Securities Act* (the "Act"), made Rule 35-502 Non-Resident Advisers (the "Rule").

The Rule and the material required by the Act to be delivered to the Minister of Finance were delivered on September 13, 2000. If the Minister does not approve the Rule, reject the Rule or return it to the Commission for further consideration, the Rule will come into force on November 27, 2000. If the Minister approves the Rule, the Rule will come into force 15 days after it is approved.

The Rule was published for comment on two occasions.

Substance and Purpose of Proposed Rule

The Commission considers a person or company to be acting as an adviser in Ontario if it, directly or through a third party, acts as an adviser for a person or company in Ontario, notwithstanding that the advice may be given from a place outside of Ontario or that the advice may be unsolicited. The Commission also considers a person or company to be acting as an adviser in Ontario if it, directly or through a third party, acts as an adviser for a mutual fund or a non-redeemable investment fund that distributes its securities in Ontario, notwithstanding that the advice to the fund may be given to, and received by, the fund outside of Ontario. In these circumstances, the Commission considers that the Ontario investors in the fund are acquiring the advisory services of the portfolio adviser of the fund and that the securities of the fund are distributed in Ontario for the purpose of providing these advisory services in Ontario. Therefore, the portfolio adviser of the fund is considered to be acting as an adviser to Ontario purchasers of the fund, and hence acting as an adviser in Ontario, by virtue of the distribution of securities of the fund to those purchasers.

As a result, the activities outside of Ontario of non-resident persons or companies may be such as to bring them within the ambit of the registration requirements under section 25 of the *Securities Act* (Ontario) (the "Act"). The substance and purpose of the Rule are to provide certain exemptions from section 25 of the Act for non-resident persons or companies in connection with their advisory activities in Ontario, where the nature of those activities is not such that the public interest requires registration. The substance and purpose of the Rule are also to provide those non-resident persons or companies with an exemption from certain of the requirements otherwise applicable to applicants for registration as, or registrants in the categories of, investment counsel, investment counsel and portfolio manager or securities adviser, who are prepared to accept conditions on their registration that limit the clients to whom advisory services may be provided.

The Rule is a reformulation of OSC Policy Statement No. 4.8

Summary of Rule

Section 1.1 contains definitions of terms and phrases used in the Rule that are not defined in Rule 14-501 Definitions. Rule 14-501 Definitions sets out definitions for commonly used terms and definitions of terms used in more than one Rule and should be read together with the Rule.

Section 2.1(1) of the Rule provides that a non-resident person or company (an "international adviser applicant") wishing to register as an adviser in the category of international adviser, may do so in reliance upon the exemptions from the requirements of the Act and the Regulation made under the Act (the "Regulation") provided by the Rule and the Regulation by indicating in responding to question 1 of Form 3 that the category of registration being applied for is that of international adviser. Subsections (2) through (4) of section 2.1 of the Rule provide that an international adviser applicant, in completing a Form 3, need not complete certain specified items of Form 3.

Section 2.2 of the Rule provides that a person wishing to register as, or seek approval as, a partner, officer, representative or director must complete a Form 4 unless the information required has previously been filed by the applicant and is current and correct as of the date of the application. Section 2.2 of the Rule also provides that the person, in completing a Form 4, need not complete certain specified items of Form 4.

Part 3 of the Rule, and in particular sections 3.1, 3.2, 3.3(1), 3.4, 3.6, and 3.8 through 3.11 of the Rule, sets out those requirements of securities laws which are intended to apply to international advisers, namely sections 102 to 104, subsections 113(1), (2) and (4), subsections 115(1),(3) and (4), sections 130 to 136 and section 145 of the Regulation.

Subsection 3.3(2) of the Rule provides relief from the requirement in section 19 of the Act to produce books, records or other relevant documents in Ontario if the laws of the jurisdiction in which those books, records or documents are located prohibit their production without the consent of the relevant client, but the international adviser is required to use its best efforts in those circumstances to obtain the client's consent. Similarly, pursuant to subsection 3.3(3), the international adviser is required to use its best efforts to obtain a client's consent to its employees or other appropriate persons attending in Ontario to give evidence in proceedings relating to its activities in Ontario.

Section 3.5 of the Rule prohibits the international adviser from compensating its partners or officers in any manner based on the value or volume of transactions initiated for clients in Ontario.

Section 3.7 of the Rule prescribes who shall hold the securities or money of an international adviser's Ontario clients.

Section 3.12 of the Rule requires the international adviser to disclose in writing to an Ontario client, before acting for the client, that the international adviser has been exempted from certain provisions of the Act and the Regulation and that there may be difficulty enforcing any legal rights that an Ontario client may have by virtue of the international adviser's non-resident status. Section 3.13 requires the same matters to be disclosed in a prospectus filed in Ontario for a fund whose

portfolio adviser is an international adviser, or whose portfolio adviser receives investment advice or portfolio management services from an international adviser.

Part 4 of the Rule establishes a procedure whereby an international adviser can obtain relief from the requirements of section 21 of the Act and section 139 of the Regulation relating to the filing of audited financial statements and from the requirements of section 2 of the Regulation relating to the preparation of those financial statements.

Part 5 of the Rule provides a procedure whereby an international adviser can obtain relief from the requirements of subsection 33(2) of the Act relating to the notification of the Director appointed under the Act of the changes specified in that subsection. Section 5.3 also provides for an exemption from Rule 35-503 Change of Registration Information, relating to information that was not required to be furnished to the Director upon the filing of the application for registration as an international adviser.

While international advisers are exempted from a number of the requirements otherwise imposed upon those applying for registration or upon registrants under the Act and Regulation, they are limited to acting in Ontario only for permitted clients, pursuant to section 6.1 of the Rule. The list of permitted clients is set out in section 1.1 of the Rule.

Under 6.2 of the Rule, an international adviser is prohibited from doing indirectly what section 6.1 prevents it from doing directly.

Pursuant to section 6.3, an international adviser cannot act as an adviser in Ontario for a type of security unless it is engaged in the business of an adviser in a foreign jurisdiction for that type of security. The international adviser is also prohibited from acting as an adviser for Canadian securities unless that activity is incidental to its acting as an adviser in Ontario for foreign securities, under section 6.4 of the Rule.

Under section 6.5 of the Rule, the revenues that the international adviser and certain affiliates may derive in any financial year from acting for clients in Ontario is limited to 25% of its aggregate consolidated gross revenues in the financial year.

Part 7 of the Rule sets out certain advisory activities that a non-resident entity can undertake in Ontario without having to be registered as an adviser in Ontario. These exemptions are the provision of unsolicited advice or portfolio management services to no more than five clients in Canada, provided certain conditions are met (section 7.1 of Rule). There is also an exemption for the provision of advice or portfolio management services to commodity pool programs by non-residents registered under the Commodity Futures Act (section 7.2 of the Rule), to a person or company registered under the Act as an investment counsel or portfolio manager or registered under the Act as a broker or investment dealer that is acting as a portfolio manager under section 148(1) of the Regulation (section 7.3 of the Rule) or to a pension plan of the non-resident's affiliates (section 7.6 of the Rule).

Part 7 of the Rule also provides certain exemptions for advisory services provided to funds. A non-resident entity may provide investment advice or portfolio management services to certain funds located outside of Ontario (section 7.4 of the Rule), to non-Canadian funds that have previously distributed securities in Ontario and are now only distributing securities in Ontario under a dividend or distribution reinvestment plan, under a right to acquire securities of the fund previously granted or in a transaction in which securities of the fund are

acquired by substantially all holders of securities of a class of the fund or another fund that has the same portfolio manager (section 7.7 of the Rule). Advice or portfolio management services may also be provided to a Canadian fund that was previously sold on a prospectus exempt basis in Ontario and that is similarly now only distributing securities in Ontario on the same basis as specified in section 7.7 (section 7.8 of the Rule). Advice or portfolio management services may also be provided to a fund where the non-resident or an affiliate has acted as an adviser continuously since before May 1, 1967 and the fund has distributed securities by way of prospectus in Ontario continuously since that date (section 7.9 of the Rule), or to funds offered primarily outside of Canada that are distributed in Ontario through registrants in reliance upon a prospectus exemption (section 7.10 of the Rule).

Pursuant to section 7.11 of the Rule, if a prospectus is filed in Ontario for a fund to which advice is or portfolio management services are provided, either directly or through another portfolio adviser, by a person or company relying upon one of the registration exemptions set out in Part 7 of the Rule, the prospectus must state that there may be difficulties in enforcing legal rights against the international adviser because of its non-resident status and, if the exemption provided by section 7.3 of the Rule is being relied on, the prospectus must also state that the Ontario registrant to which advice is given by the international adviser has responsibility for that advice.

Part 8 of the Rule sets out some requirements for extra-provincial advisers. An extra-provincial adviser must be registered in another province (section 8.1 of the Rule), must inform the Director immediately upon becoming aware of a change in registration status in the other jurisdiction (section 8.2 of the Rule), and the extra-provincial adviser must have at least one counselling officer resident in Canada (section 8.3 of the Rule).

Part 9 of the Rule requires an international adviser, an extra-provincial adviser, and each partner, officer or representative of the international adviser or extra-provincial adviser to submit to jurisdiction and appoint an agent for service of process. The name and address of the agent for service must be disclosed in writing to an Ontario client, before the international adviser or extra-provincial adviser acts for the client (section 9.2 of the Rule). Pursuant to section 9.3 of the Rule, a prospectus filed in Ontario for a fund to which advice is or portfolio management services are provided, either directly or through another portfolio adviser, by an international adviser or extra-provincial adviser, must disclose the name and address of the agent for service of process of the international adviser or extra-provincial adviser.

Part 10 of the Rule permits the Director to grant an exemption to the Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

Final Amendments

The Rule has been amended since its last publication for comment ((2000) 23 OSCB 4393) as follows.

Section 6.4 of the Rule stipulates that an international adviser is restricted to acting as an adviser in Ontario for foreign securities, and can only act as an adviser in Ontario for Canadian securities if that activity is "incidental" to its acting as an adviser for foreign securities. Section 6.4 has been amended to provide additional clarification on the evaluation of "incidental" by stating that it shall be evaluated from the point of view of the adviser, on an account by account basis, and not the client.

Summary of Written Comments Received by the Commission

The Commission received one comment on the second publication of the Rule, from Fidelity Investments Canada Limited.

While the commentator was generally supportive of the Rule, concern was expressed over the fact that an analogous approach has not yet been adopted with respect to registration under the *Commodity Futures Act* ("CFA").

Until the December 1999 amendments to the CFA, pursuant to Bill 14, the *More Tax Cuts for Jobs, Growth and Prosperity Act, 1999*, the Commission did not have rule making authority under the CFA. The Commission is now able to consider making a similar rule pursuant to the CFA, however, the Commission does not want to delay implementing the Rule under the Securities Act.

Regulations to be Amended

The Commission will amend section 99 of the Regulation to add "international adviser (investment counsel, portfolio manager or securities adviser)" as an additional category of registration for advisers, and will amend section 101 of the Regulation to add as subsection (3) a provision excluding international advisers from the operation of Part V of the Regulation except as provided in subsection (4) or in this Rule.

Each of the changes to the Regulation will be effective on the day the Rule comes into force.

Text of Rule

The text of the Rule follows.

Expiry of the Rule *In the Matter of Certain Advisers* and Rescission of OSC Policy Statement No. 4.8

As provided in the Rule *In the Matter of Certain Advisers* (1997), 20 OSCB 1217, as amended, that rule expires upon the coming into force of Rule 35-502 Non-Resident Advisers, which is intended to replace it; and OSC Policy Statement No. 4.8 entitled Non Resident Advisers is rescinded.

DATED: September 22, 2000

**ONTARIO SECURITIES COMMISSION RULE 35-502
NON-RESIDENT ADVISERS**

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**ONTARIO SECURITIES COMMISSION RULE 35-502
NON-RESIDENT ADVISERS**

PART 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions - In this Rule

"book-based system" has the meaning ascribed to that term in National Instrument 81-102 Mutual Funds;

"Canadian security" means a security other than a foreign security;

"extra-provincial adviser" means a person or company that is registered or applying for registration as an adviser under the Act, other than an international adviser or international adviser applicant, and that does not have a place of business in Ontario with partners, officers or representatives resident in Ontario who are acting on its behalf in Ontario;

"foreign security" has the meaning ascribed to that term in subsection 204(1) of the Regulation;

"Form 3" and "Form 4" mean Form 3 or Form 4 to the Regulation, respectively;

"fund" means a mutual fund or a non-redeemable investment fund;

"international adviser applicant" means a person or company applying for registration as an international adviser under the Act;

"international adviser" means

- (a) a person or company that has been granted registration as an international adviser (investment counsel, portfolio manager or securities adviser) under the Act, and
- (b) a registrant whose registration is subject to the restrictions set out in former Rule *In the Matter of Certain Advisers* (1997), 20 OSCB 1217, as amended;

"manager" means the person or company that directs the business, operations or affairs of a fund;

"Ontario client" means a permitted client who is ordinarily resident in Ontario;

"permitted client" means one of the following clients:

1. A bank listed in Schedule I or II to the *Bank Act* (Canada), acting as principal or as agent for accounts fully managed by it.
2. A loan corporation or trust corporation registered under the *Loan and Trust Corporations Act*, acting as principal or as trustee or agent for accounts fully managed by it.

3. An insurance company licensed under the *Insurance Act*.
4. Each of a treasury branch, credit union or caisse populaire that, in each case, is authorized to carry on business in Ontario.
5. The Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada).
6. Her Majesty in right of Canada or of any jurisdiction.
7. A portfolio manager acting as principal or as agent for accounts fully managed by it.
8. A broker or investment dealer acting as principal or, as permitted by section 148 of the Regulation, as agent for accounts fully managed by it.
9. A pension fund that is regulated either by the Office of the Superintendent of Financial Institutions (Canada) or by a provincial pension commission, or a group of pension funds that are so regulated, if the pension fund has, or the group of pension funds have, net assets of at least \$100 million, or its equivalent in another currency, provided that, in determining net assets, the liability of the pension fund for future pension payments shall not be included.
10. A registered charity under the ITA with assets not used directly in charitable activities or administration of at least \$5 million or its equivalent in another currency.
11. An individual who has a net worth of at least \$5 million or its equivalent in another currency, excluding the value of his or her principal residence, as certified by the individual.
12. A person or company that is entirely owned, legally and beneficially, by an individual or individuals referred to in paragraph 11, who hold its or their ownership interest in the person or company directly or through a trust the trustee of which is a trust company registered under the *Loan and Trust Corporations Act*.
13. A corporation that has shareholders' equity of at least \$100 million on a consolidated basis or its equivalent in another currency.
14. A fund that distributes its securities in Ontario, if the manager of the fund

- (a) is ordinarily resident in a jurisdiction and is registered under the Act as a portfolio manager, broker, investment dealer or mutual fund dealer, or is registered under Canadian securities legislation other than the Act in an equivalent category of registration, and
 - (b) is a party to the contract under which the international adviser provides investment advice or portfolio management services to the fund.
- (a) international adviser applicant in Ontario; and
- (b) each director of the international adviser applicant.

2.2 Completion of Form 4 - A person that applies for registration as a partner, officer or representative, or that seeks approval as a partner, officer, representative or director, listed in the international adviser's Form 3 pursuant to section 2.1(4) shall complete and execute a Form 4, unless the information required by Form 4 has previously been filed by the applicant and the information as previously filed is current and correct as of the date of application, but is not required to complete items 7, 8, 10, 20 and 21 of Form 4.

15. A fund that distributes its securities in Ontario only to persons or companies referred to in paragraphs 1 through 13 or described in section 7.7 or 7.8;

"portfolio adviser" means a person or company that provides investment advice or portfolio management services under a contract with a fund or with the manager of the fund; and

"submission to jurisdiction and appointment of agent for service of process form" means, for an international adviser, the form set out in Appendix A to this Rule and, for a partner, officer or representative of an international adviser, the form set out in Appendix B to this Rule.

1.2 Extended Meaning of Affiliates - An international adviser that is a partnership is considered to be affiliated with another partnership or with a company, and an international adviser that is a company is considered to be affiliated with a partnership, if the partnerships, or the partnership and the company, would be affiliates of each other under the definition of "affiliated companies" in the Act, if that definition and the related definitions of "controlled companies" and "subsidiary companies" were each read as if references to a "company" were references to a "partnership".

PART 2 INTERNATIONAL ADVISER APPLICANTS

2.1 Completion of Form 3

- (1) An international adviser applicant shall complete and execute a Form 3 and shall indicate in response to question 1 of Form 3 that the applicant is applying for registration as an international adviser.
- (2) An international adviser applicant is not required to complete item 3 of Form 3.
- (3) An international adviser applicant is not required to complete item 11 of Form 3, other than item 11A(b).
- (4) An international adviser applicant, in responding to items 9 and 10 of Form 3, need only list and provide information about
 - (a) its partners, officers or representatives who will be acting on its behalf in respect of the business of the

PART 3 INTERNATIONAL ADVISERS

3.1 General Requirements

- (1) No registration or renewal of registration shall be granted to an international adviser applicant or an international adviser unless the international adviser applicant or the international adviser has complied with the requirements of this Rule and any applicable requirements of the Regulation at the time of the granting of the registration or the renewal of registration.
- (2) An international adviser and each of its partners, officers or directors registered under the Act shall comply with the requirements of this Rule and any other applicable requirements of Ontario securities law.
- (3) The Commission may prescribe conditions of registration for an international adviser or its registered partners, officers or representatives, or for a group of international advisers or group of its or their registered partners, officers or representatives, that are in lieu of some or all of the conditions of registration set forth in this Rule, if the Commission gives prior notice of the proposed conditions to those persons or companies affected and affords them an opportunity to be heard and the Commission publishes notice in a publication published by the Commission of each instance when it so prescribes.

3.2 Acquisition of an Interest in Another Registrant - An international adviser is subject to the requirements of section 104 of the Regulation or Part 4 of Rule 33-503 Change of Registration Information when it becomes effective.

3.3 Record Keeping and Production of Records and Witnesses

- (1) An international adviser is subject to the requirements relating to record keeping set out in subsections 113(1), (2) and (4) of the Regulation.
- (2) If the laws of the foreign jurisdiction in which the books, records or documents referred to in subsection 19(3) of the Act of an international adviser are located prohibit production of the

books, records or documents in Ontario without the consent of the relevant client, an international adviser shall, upon a request by the Commission under subsection 19(3) of the Act

- (a) so advise the Commission; and
 - (b) use its best efforts to obtain the client's consent to the production of the books, records or documents.
- (3) At the request of the Director, the Commission or a person appointed by the Commission to make an investigation under the Act relating to the international adviser's activities in Ontario, an international adviser shall
- (a) immediately produce in Ontario, at the international adviser's expense, appropriate persons in its employ as witnesses to give evidence on oath or otherwise;
 - (b) if the appropriate persons referred to in paragraph (a) are not in its employ, use its best efforts immediately to produce in Ontario, at the international adviser's expense, the persons to give evidence on oath or otherwise, subject to the laws of the foreign jurisdiction that are otherwise applicable to the giving of evidence; and
 - (c) if the laws of a foreign jurisdiction that are otherwise applicable to the giving of evidence prohibit the international adviser or the persons referred to in paragraph (a) from giving the evidence without the consent of the relevant client
 - (i) so advise the Commission or the person making the request, and
 - (ii) use its best efforts to obtain the client's consent to the giving of the evidence.

3.4 Standards Ensuring Fairness - An international adviser shall adopt and maintain standards directed to ensuring fairness in the allocation of investment opportunities among the Ontario clients of the investment counsel and a copy of the standards so established shall be furnished to each Ontario client of the international adviser and filed with the Commission.

3.5 Compensation of Partners, Officers or Representatives of International Advisers - An international adviser shall not compensate its partners, officers or representatives in a manner that is based upon the value or the volume of the transactions initiated for the Ontario clients of the international adviser.

3.6 Supervision of Accounts - Subsections 115(3) and (4) of the Regulation apply to an international adviser.

3.7 Holding of Client Assets

- (1) Subject to subsections (2) and (3), an international adviser shall ensure that the securities and money of an Ontario client are held
 - (a) by the Ontario client; or
 - (b) by a custodian or sub-custodian
 - (i) that meets the requirements prescribed for acting as a custodian or sub-custodian of a mutual fund in National Instrument 81-102, and
 - (ii) that is subject to the agreement announced by the Bank for International Settlements on July 1, 1988 concerning international convergence of capital measurement and capital standards.
- (2) An international adviser or an affiliate of the international adviser that holds the securities or money of an Ontario client as custodian or sub-custodian shall hold the securities and money in compliance with sections 116, 117, 118 and 119 of the Regulation.
- (3) The securities of an Ontario client may be deposited with or delivered to a depository or clearing agency that is authorized to operate a book-based system.

3.8 Renewals of Registration - Sections 130 to 133 of the Regulation apply to an international adviser and each of its registered partners, officers and representatives.

3.9 Examinations - Section 134 of the Regulation applies to an international adviser and each of its registered partners, officers and representatives.

3.10 Amendments to Registration - Sections 135 and 136 of the Regulation apply to an international adviser and each of its registered partners, officers and representatives.

3.11 Conducting an Audit at the Request of the Commission - Section 145 of the Regulation applies to an international adviser.

3.12 Disclosure of Status to Clients - An international adviser shall deliver to an Ontario client, before acting as an adviser to the Ontario client, a statement in writing disclosing

- (a) to the extent applicable, that there may be difficulty enforcing any legal rights the Ontario client may have against the international adviser because
 - (i) the international adviser is ordinarily resident outside Canada and all or a substantial portion of its assets are situated

outside Canada, and

(ii) if applicable, that the laws of the foreign jurisdiction in which the books, records and documents referred to in subsection 19(3) of the Act of the international adviser are located prevent the production of those books, records and documents in Ontario; and

(b) that the international adviser is not fully subject to the requirements of the Act and the regulations concerning proficiency, capital, insurance, record keeping, segregation of funds and securities and statements of account and portfolio.

3.13 Disclosure of Status in Offering Documents - A prospectus filed in Ontario for a fund whose portfolio adviser is an international adviser, or whose portfolio adviser receives investment advice or portfolio management services from an international adviser, shall disclose the matters referred to in section 3.12.

PART 4 EXEMPTION FROM FINANCIAL STATEMENT PREPARATION AND FILING REQUIREMENTS

4.1 Exemption from Financial Statement Preparation Requirements and Filings - An application under section 147 of the Act for an exemption from the requirement of subsection 21.10(3) of the Act that registrants file annual audited financial statements may consist of the following sentence if the international adviser applicant or the international adviser is not applying for registration, and is not registered, in any category of registration in addition to registration as a international adviser and if the application is made by an international adviser applicant concurrently with the filing of an application for registration or by an international adviser before or on the first anniversary of registration as an adviser after the date this Rule comes into force:

"We hereby apply for an exemption from the requirement of the Act that registrants file annual audited financial statements. We understand that this exemption will terminate if we become a registrant in another category of registration under the Act."

4.2 Order Granting Exemption - The issuance by the Director of a certificate of registration or renewal of registration to the international adviser applicant or to the international adviser is evidence of the approval of the application made under section 4.1, if that section has been complied with, unless the exemption request is denied in writing by the Director.

PART 5 EXEMPTION FROM REPORTING OF CERTAIN CHANGES

5.1 Exemption from Reporting of Certain Changes under the Act - An application under subsection 33(4) of the Act for an exemption from the

requirement of subsection 33(2) of the Act that advisers notify the Director of the changes in information required to be reported under that subsection, to the extent that the change required to be reported relates to information that was not required to be furnished to the Director upon the filing of the application for registration by an international adviser, may consist of the following sentence if the international adviser applicant or the international adviser is not applying for registration, and is not registered, in any category of registration in addition to registration as a international adviser and if the application is made by an international adviser applicant concurrently with the filing of an application for registration or by an international adviser before or concurrently with the first anniversary of registration as an adviser made after the date this Rule comes into force:

"Subsection 33(2) of the Ontario Securities Act requires advisers to notify the Director of changes in the information required to be reported by that subsection. We hereby apply for an exemption from these requirements to the extent that the change relates to information that was not required to be furnished to the Director upon the filing of our application for registration as an international adviser. We understand that this exemption will terminate if we become a registrant in another category of registration under the Act."

5.2 Order Granting Exemption - The issuance by the Director of a certificate of registration or renewal of registration to the international adviser applicant or the international adviser is evidence of the approval of the application made under section 5.1, if that section has been complied with, unless the exemption request is denied in writing by the Director.

5.3 Exemption from Rule 35-503 - Despite Rule 35-503 Change of Registration Information, an international adviser is not required to file an amendment to its registration or to notify the Director of a notifiable change relating to information that was not required to be furnished to the Director upon the filing of the applicant's application for registration as an international adviser.

PART 6 RESTRICTED ADVISORY ACTIVITIES FOR INTERNATIONAL ADVISERS

6.1 Permitted Clients

- (1) An international adviser shall only act as an adviser in Ontario for permitted clients.
- (2) In determining whether a permitted client that is a pension fund, group of pension funds, registered charity or corporation meets the financial requirements referred to in paragraphs 9, 10 and 13 of the definition of a "permitted client" in section 1.1, the international adviser may rely on the most recent audited financial statements of the permitted client.
- (3) The financial requirements referred to in

paragraphs 9, 10, 11 and 13 of the definition of the term "permitted client" in section 1.1 are only required to be satisfied at the time the international adviser first acts as an adviser for the client.

- (4) Despite subsection (2), if an international adviser was acting as an adviser for a client on June 1, 1992 and has acted for that client continuously since that date, the financial requirements referred to in section 1.1 may be satisfied as of June 1, 1992.

6.2 Indirect Advising - An international adviser shall not act as an adviser in Ontario to a person or company that is not a permitted client indirectly, by providing investment advice or portfolio management services through another person or company, other than a person or company referred to in paragraphs 1, 2, 7 or 8 of the definition of "permitted client" in section 1.1 or except as permitted by Part 7.

6.3 Advising in Another Country - An international adviser shall not act as an adviser in Ontario for a type of security unless it is engaged in the business of an adviser in a foreign jurisdiction for that type of security.

6.4 Advising in Respect of Foreign Securities - An international adviser shall not act as an adviser in Ontario for Canadian securities unless this activity is incidental to its acting as an adviser in Ontario for foreign securities. Whether the activity can be considered to be incidental shall be evaluated from the point of view of the adviser, on an account by account basis, and not the client.

6.5 Limitation on Revenues - No more than 25 per cent of the aggregate consolidated gross revenues from advisory activities of an international adviser and its affiliates or affiliated partnerships, in any financial year of the international adviser, shall arise from the international adviser and its affiliates or affiliated partnerships acting as advisers for clients in Canada.

PART 7 EXEMPTIONS FROM REGISTRATION

7.1 Unsolicited Advising of not More than Five Clients in Canada

- (1) The adviser registration requirement does not apply to a person or company, not ordinarily resident in Ontario, if
- (a) it, and its affiliates or affiliated partnerships that are not ordinarily resident in Ontario, did not act as an adviser during the preceding 12 months for more than five clients in Canada;
 - (b) it acts as an adviser in Ontario in reliance upon the exemption provided by this section solely for permitted clients, other than a fund;
 - (c) it does not solicit clients in Ontario;

- (d) its acting as an adviser in Ontario for Canadian securities is incidental to its acting as an adviser in Ontario for foreign securities;
- (e) before advising an Ontario client, it notifies the Ontario client that it is not registered as an adviser in Ontario; and
- (f) all assets of its Ontario clients are held by persons or companies that meet the requirements of paragraph 3.7(1) or are referred to in subsection 3.7(3).

(2) For purposes of paragraph (1)(a), in determining if a person or company has acted as an adviser for more than five clients in Canada

- (a) two or more persons who are or intend to become the joint registered owners of securities or an account in respect of which the person or company acts as an adviser are counted as one client;
- (b) a person or company acting as trustee or agent for more than one fully managed account is counted as one client;
- (c) clients referred to in sections 7.2 through 7.9 are excluded; and
- (d) clients who would be excluded by sections 7.2 through 7.9 if they were residents of Ontario are excluded.

7.2 Commodity Pool Programs - The adviser registration requirement does not apply to a person or company, not ordinarily resident in Ontario, that is registered under the *Commodity Futures Act*, in connection with that person or company acting as a portfolio adviser to a mutual fund that is subject to National Instrument 81-104 Commodity Pools or to a non-redeemable investment fund that would be subject to that National Instrument if it were a mutual fund.

7.3 Sub-Adviser for a Registrant

- (1) The adviser registration requirement does not apply to a person or company, not ordinarily resident in Ontario, in connection with that person or company acting as an adviser for an investment counsel or portfolio manager, or for a broker or investment dealer acting as a portfolio manager as permitted by subsection 148(1) of the Regulation, if
- (a) the obligations and duties of the person or company so acting as an adviser are set out in a written agreement with the registrant;
 - (b) the registrant contractually agrees with its clients on whose behalf investment advice is or portfolio management services are to be provided to be responsible for any loss that arises out of the failure of the person or company

so acting as an adviser

- (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the registrant and each client of the registrant for whose benefit the advice is or portfolio management services are to be provided, or
- (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;

- (c) the registrant cannot be relieved by its clients from its responsibility for loss under paragraph (b); and
- (d) the person or company so acting as an adviser, if a resident of a jurisdiction, is registered as an adviser in the jurisdiction.

7.4 Advising Funds Outside Ontario - The adviser registration requirement does not apply to a person or company, not ordinarily resident in Ontario, in connection with that person or company acting as a portfolio adviser to a fund that does not have an address in Ontario, if

- (a) advice to the fund is given and received or portfolio management services are provided outside of Ontario; and
- (b) the person or company is registered in a jurisdiction in a category of registration that permits the person or company to provide discretionary portfolio management services or as a broker or investment dealer acting as a portfolio manager as permitted by a provision similar to subsection 148(1) of the Regulation.

7.5 Advising Advisers to Funds Outside Ontario - The adviser registration requirement does not apply to a person or company, not ordinarily resident in Ontario, in connection with that person or company acting as an adviser to a portfolio adviser to a fund exempted from the adviser registration requirements under section 7.4, if

- (a) the obligations and duties of the person or company are set out in a written agreement with the portfolio adviser to the fund;
- (b) the portfolio adviser to the fund contractually agrees with the fund to be responsible for any loss to the fund that arises out of the failure of the person or company
 - (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the

best interests of the fund, or

- (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;
- (c) the portfolio adviser to the fund cannot be relieved by the fund or its securityholders from its responsibility for loss under paragraph (b); and
- (d) the person or company, if a resident of a jurisdiction, is registered as an adviser in the jurisdiction.

7.6 Advising Pension Funds of Affiliates - The adviser registration requirement does not apply to a person or company, not ordinarily resident in Ontario, in connection with that person or company acting as an adviser for a pension fund sponsored by an affiliate of the person or company for the benefit of the employees of the affiliate or affiliates of the affiliate.

7.7 Distributions to Existing Holders - The adviser registration requirement does not apply to a person or company, not ordinarily resident in Ontario, in connection with that person or company acting as a portfolio adviser to a fund, if the fund

- (a) does not have an address in Canada;
- (b) is not organized under the laws of Canada or a jurisdiction; and
- (c) only distributes securities to a person or company in Ontario in a distribution to which the prospectus requirements of the Act would apply but for the availability of one or more of the exemptions contained in
 - (i) Rule 81-501 Mutual Fund Reinvestment Plans,
 - (ii) subclause 72(1)(f)(iii) of the Act, or
 - (iii) in a transaction in which securities of the fund are acquired by substantially all holders of securities of a class of the fund or another fund that has the same portfolio adviser.

7.8 Existing Privately Placed Funds - The adviser registration requirement does not apply to a person or company, not ordinarily resident in Ontario, in connection with that person or company acting as a portfolio adviser to a fund, if the fund

- (a) has sold its securities in Ontario in a distribution to which the prospectus requirements of the Act would apply but for the availability of one or more of the exemptions contained in clause 72(1)(a) or (c) of the Act, in clause 72(1)(d) or (p) of the Act subject to compliance with the requirements of Rule 45-501 Prospectus Exempt Distributions, or in subsection 1.2(a) of Rule 32-503 Registration and Prospectus Exemption for Trades by Financial Intermediaries in Mutual Fund Securities to Corporate Sponsored Plans; and
- (b) only distributes securities to a person or company in Ontario in a distribution to which the prospectus requirements of the Act would apply but for the availability of one or more of the exemptions contained in
 - (i) Rule 81-501 Mutual Fund Reinvestment Plans,
 - (ii) subclause 72(1)(f)(iii) of the Act, or
 - (iii) in a transaction in which securities of the fund are acquired by substantially all holders of securities of a class of the fund or another fund that has the same portfolio adviser.

7.9 Funds Managed Under Prior Legislation - The adviser registration requirement does not apply to a person or company, not ordinarily resident in Ontario, in connection with that person or company acting as a portfolio adviser to a fund, if

- (a) the person or company or an affiliate of the person or company has acted continuously as a portfolio adviser to the fund since before May 1, 1967;
- (b) securities of the fund have continuously been distributed in Ontario since May 1, 1967 by means of a prospectus prepared and filed in accordance with the Act or its predecessor legislation; and
- (c) the person or company has not been registered as an adviser.

7.10 Privately Placed Funds Offered Primarily Abroad - The adviser registration requirement does not apply to a person or company, not ordinarily resident in Ontario, in connection with the person or company acting as a portfolio adviser to a fund, if the securities of the fund are

- (a) primarily offered outside of Canada;
- (b) only distributed in Ontario through one or more registrants; and
- (c) distributed in Ontario in reliance upon

an exemption from the prospectus requirements of the Act.

7.11 Disclosure in Offering Documents - A prospectus filed in Ontario for a fund whose portfolio adviser is relying upon an exemption from the adviser registration requirements provided by this Part, or whose portfolio adviser receives investment advice or portfolio management services from a person or company that relies upon an exemption from the adviser registration requirements provided by this Part, shall include disclosure that

- (a) if the person or company is advising a registrant in reliance on the exemption in section 7.3 or a portfolio adviser in reliance upon the exemption in section 7.5, the registrant or portfolio adviser has responsibility for the investment advice given or portfolio management services provided by the person or company; and
- (b) to the extent applicable, there may be difficulty in enforcing any legal rights against the person or company because it is resident outside Canada and all or a substantial portion of its assets are situated outside Canada.

PART 8 EXTRA-PROVINCIAL ADVISERS

8.1 Registration in Another Province - A person or company applying for registration as an adviser under the Act that is an extra-provincial adviser shall be registered under securities legislation of the jurisdiction in which the head office or principal place of business of the person or company is located in a category of registration that permits the person or company to carry on the activities in that jurisdiction that registration as an adviser under the Act would permit the person or company to carry on in Ontario.

8.2 Change in Registration Status in Another Jurisdiction - An extra-provincial adviser shall inform the Director immediately upon the extra-provincial adviser becoming aware that the registration of the extra-provincial adviser in another jurisdiction

- (a) is not being renewed, is lapsing or is being suspended, cancelled, revoked or is becoming restricted by the imposition of any terms or conditions; or
- (b) is the subject of an investigation by a securities regulatory authority other than the Commission.

8.3 Counselling Officer Resident in Canada - An extra-provincial adviser shall have at least one officer resident in Canada who is registered as a counselling officer in accordance with section 3.2 of Rule 31-502 Proficiency Requirements for Registrants.

PART 9 SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE OF PROCESS FORMS

- 9.1 Submission to Jurisdiction** - An international adviser, an extra-provincial adviser and each partner, officer or representative of an international adviser or an extra-provincial adviser seeking registration under the Act shall file as part of his, her or its application for registration an executed submission to jurisdiction and appointment of agent for service of process form.
- 9.2 Disclosure of Submission to Jurisdiction to Clients** - An international adviser or an extra-provincial adviser shall deliver to an Ontario client, before acting as an adviser to the Ontario client, a statement in writing disclosing the name and address of the agent for service of process of the international adviser or extra-provincial adviser in Ontario appointed by the international adviser or extra-provincial adviser or that this information is available from the Commission.
- 9.3 Disclosure of Submission to Jurisdiction in Offering Documents** - A prospectus filed in Ontario for a fund whose portfolio adviser is an international adviser or an extra-provincial adviser, or whose portfolio adviser receives investment advice or portfolio management services from an international adviser or an extra-provincial adviser, shall disclose the matters referred to in section 9.2.

PART 10 EXEMPTION

- 10.1 Exemption** - The Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

**ONTARIO SECURITIES COMMISSION RULE 35-502
NON-RESIDENT ADVISERS**

APPENDIX A

**FORM OF SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT
FOR SERVICE OF PROCESS BY A NON-RESIDENT ADVISER**

1. Name of the applicant (the "Applicant"): _____
2. Jurisdiction of incorporation or organization of the Applicant: _____
3. Name of agent for service of process (the "Agent"): _____
4. Address for service of process of the Agent in Ontario: _____

5. The Applicant designates and appoints the Agent at the address stated above as its agent upon whom may be served any notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (each, a "Proceeding") arising out of or relating to or concerning the Applicant's activities as an adviser in Ontario, and irrevocably waives any right to raise as defence in any Proceeding any alleged lack of jurisdiction to bring that Proceeding.
6. The Applicant irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of Ontario and any administrative proceeding in Ontario, in any Proceeding arising out of or related to or concerning the Applicant's activities as an adviser in Ontario.
7. Until six years after the Applicant ceases to be registered as an adviser in Ontario, the Applicant shall file
 - (a) a new Submission to Jurisdiction and Appointment of Agent for Service of Process in this form at least 30 days before termination for any reason of this Submission to Jurisdiction and Appointment of Agent for Service of Process and immediately after the death or incapacity of the Agent or the Agent ceasing to carry on business; and
 - (b) an amended Submission to Jurisdiction and Appointment of Agent for Service of Process at least 30 days before any change in the name or address of the Agent from that set forth above.
8. This Submission to Jurisdiction and Appointment of Agent for Service of Process is governed by and construed in accordance with the laws of Ontario.

Dated: _____

[Name of Applicant]

By: _____
(Signature of authorized signatory)

(Name and title of authorized signatory)

Acceptance

The undersigned accepts the appointment as agent for service of process of _____ **(Insert name of Applicant)** under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service of Process and agrees to deliver to the Ontario Securities Commission (the "Commission") a copy of each document served on the undersigned as agent for service of process of the Applicant, within five days of the date the document was served on the undersigned, and to advise the Commission immediately if the undersigned is unable to deliver to the Applicant a copy of a document served on the undersigned as Agent.

Dated: _____

(Signature of Agent or authorized signatory)

(Name and Title of Authorized Signatory)

**ONTARIO SECURITIES COMMISSION RULE 35-502
NON-RESIDENT ADVISERS**

APPENDIX B

**FORM OF SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT
FOR SERVICE OF PROCESS BY NON-RESIDENT PARTNERS, OFFICERS OR
REPRESENTATIVES OF A NON-RESIDENT ADVISER**

1. Name of the adviser (the "Registrant"): _____

2. Jurisdiction of incorporation or organization of the Registrant: _____
3. Name and address of person filing this form (the "Filing Person"): _____

4. Name of agent for service of process (the "Agent"): _____
5. Address for service of process of the Agent in Ontario: _____

6. The Filing Person designates and appoints the Agent at the address of the Agent 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, penal or other proceeding (each, a "Proceeding") arising out of or relating to or concerning the Filing Person's activities in Ontario as a registrant under the *Securities Act* (Ontario) (the "Act"), and irrevocably waives any right to raise as a defence in any Proceeding any alleged lack of jurisdiction to bring that Proceeding.
7. The Filing Person irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of Ontario and any administrative proceeding in Ontario, in any Proceeding arising out of or related to or concerning the Filing Person's activities in Ontario as a registrant under the Act.
8. Until the earlier of the termination of the Filing Person's position as a partner, officer or representative of the Registrant and six years after the Registrant ceases to be a registrant under the Act, the Filing Person shall file
 - (a) a new Submission to Jurisdiction and Appointment of Agent for Service of Process in this form at least 30 days prior to termination for any reason of this Submission to Jurisdiction and Appointment of Agent for Service of Process and immediately after the death or incapacity of the Agent or the Agent ceasing to carry on business; and
 - (b) an amended Submission to Jurisdiction and Appointment of Agent for Service of Process at least 30 days before any change in the name or address of the Agent as set forth above.
9. This Submission to Jurisdiction and Appointment of Agent for Service of Process is governed by and construed in accordance with the laws of Ontario.

Dated: _____

(Signature of Filing Person)

(Name of Filing Person)

Acceptance

The undersigned accepts the appointment as agent for service of process of _____ (**Insert name of Filing Person**) pursuant to the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service of Process and acknowledges agrees to deliver to the Ontario Securities Commission (the "Commission") a copy of each document served on the undersigned as agent for service of process of the Filing Person, within five days of the date the document was served on the undersigned, and to advise the Commission immediately if the undersigned is unable to deliver to the Filing Person a copy of a document served on the undersigned as Agent.

Dated: _____

(Signature of Agent or authorized signatory)

(Name and title of authorized signatory)

**REGULATION TO AMEND
REGULATION 1015 OF THE REVISED REGULATIONS
OF ONTARIO, 1990
MADE UNDER THE
SECURITIES ACT**

Note: Since the end of 1999, Regulation 1015 has been amended by Ontario Regulations 3/00, 108/00, 133/00, 222/00, 342/00 and 468/00. Previous amendments are listed in the Table of Regulations published in *The Ontario Gazette* dated January 22, 2000.

1. Section 99 of Regulation 1015 of the Revised Regulations of Ontario, 1990 is amended by adding the following paragraph:

- 5. International advisers (investment counsel, portfolio managers or securities advisors), being persons or companies that have registered under the Act in reliance on Ontario Securities Commission Rule 35-502 *Non-Resident Advisers* and that are,
 - i. investment counsel,
 - ii. investment counsel and portfolio managers, or
 - iii. securities advisers.

2. Section 101 of the Regulation is amended by adding the following subsections:

(3) Subject to subsection (4), this Part does not apply to an international adviser (investment counsel, portfolio manager or securities adviser) except as provided in Ontario Securities Commission Rule 35-502 *Non-Resident Advisers*.

(4) Section 99 applies to an international adviser (investment counsel, portfolio manager or securities adviser).

3. This Regulation comes into force on the day that the rule made by the Ontario Securities Commission on September 12, 2000 entitled "Ontario Securities Commission Rule 35-502 *Non-Resident Advisers*" comes into force.

Ontario Securities Commission:

.....
Vice Chair

.....
(Print Name)

.....
Commissioner

.....
(Print Name)

Dated on, 2000.

Note: The rule made by the Ontario Securities Commission on September 12, 2000 entitled "Ontario Securities Commission Rule 35-502 *Non-Resident Advisers*" comes into force on, 2000.