

Notice of and request for comment

Draft Regulation to amend Regulation 31-103 respecting Registration Requirements and Exemptions and draft amendments to Policy Statement to Regulation 31-103 respecting Registration Requirements and Exemptions

Registration of International and Certain Domestic Investment Fund Managers

October 15, 2010

Introduction

The Canadian Securities Administrators (the CSA or we) are seeking comments on proposed amendments to *Regulation 31-103 respecting Registration Requirements and Exemptions* (the Regulation) and *Policy Statement to Regulation 31-103 respecting Registration Requirements and Exemptions* (the Policy Statement) related to the registration of international and certain domestic investment fund managers.

In this notice, we refer to the following types of investment fund managers as non-resident investment fund managers:

- (1) international investment fund managers who carry out investment fund management activities from a location outside of Canada.
- (2) domestic investment fund managers with a head office in one province who carry out investment fund management activities in other provinces or territories.

On September 28, 2009, the Regulation came into effect, providing a new registration regime in Canada, including a new registration category for investment fund managers. The Regulation provides temporary exemptions for certain investment fund managers. Specifically, sections 16.5 and 16.6 of the Regulation currently provide temporary exemptions for non-resident investment fund managers, so that registration is not required in any province or territory until September 28, 2011.

We indicated in the Notice dated July 17, 2009 (the 2009 Notice) that accompanied the Regulation that we would publish a proposal for comment in 2010 to explain the circumstances where an international investment fund manager will need to register, and in what additional provinces and territories a domestic investment fund manager with a head office in Canada will need to register.

We are publishing for comment new exemptions in the Regulation and additional guidance in the Policy Statement in these areas. The comment period will end on **January 13, 2011**.

The temporary relief provided in sections 16.5 and 16.6 of the Regulation will expire on September 28, 2011. In the event the proposed amendments are approved and implemented, we expect the implementation date of the proposed new exemptions to be very close to the expiry date of the existing temporary exemptions. We strongly encourage non-resident investment fund managers to assess their circumstances in advance to determine whether they will need to be registered in any province or territory by September 28, 2011.

1. Summary and purpose of the proposed amendments to the Regulation and the Policy

Scope of the investment fund manager category

The investment fund manager category is intended to ensure that investment fund managers have sufficient proficiency, integrity and solvency (including prescribed capital), to adequately carry out their functions. We identified the following risks in the

CSA notice dated February 20, 2007 as being particular to the management of an investment fund:

- incorrect or untimely calculation of net asset value
- incorrect or untimely preparation of financial statements and reports
- incorrect or untimely provision of transfer agency or record-keeping services
- conflicts of interest between the fund manager and its investors.

These risks concern investors in any investment fund regardless of where the investment fund manager is located. We think, however, that there will be circumstances where the investment fund manager registration requirement may be unduly burdensome to an investment fund manager who carries out activities outside of a particular province or territory, particularly where the investment fund has security holders in a province or territory due to circumstances beyond its control, for example when a security holder moves from one province to another.

Registration of non-resident investment fund manager

A non-resident investment fund manager would need to be registered in a province or territory in the following circumstances:

(1) an international investment fund manager who carries out investment fund management activities from a location outside of Canada would need to register in the relevant province or territory, if the international fund it manages has security holders that are local residents and the international investment fund manager or the fund they manage, has actively solicited local residents to purchase securities of the fund.

(2) a domestic investment fund manager who carries out investment fund management activities would also need to register in another province or territory in addition to the province or territory where its head office is located, if the domestic fund has security holders that are local residents and the domestic investment fund manager, or the fund it manages, has actively solicited local residents to purchase securities of the funds.

Active solicitation

In the proposed amendments to the Policy Statement, we provide guidance about

- our interpretation of the investment fund manager registration requirement, and
- what we mean by the term “actively solicited”.

Proposed exemptions

We are proposing the following exemptions from the investment fund manager registration requirement for non-resident investment fund managers:

1. Section 8.29.1 – *International investment fund manager* An international investment fund manager would not need to be registered if the investment fund it manages is only distributed to permitted clients, provided certain other conditions are met.

We are proposing thresholds for this exemption so that an international investment fund manager that has a significant presence in the Canadian market would not be able to rely on this exemption. The proposed thresholds are

- the fair value of all of the assets attributable to Canadian security holders of any investment fund for which it acts as investment fund manager should not be more than 10% of the fair value of all the assets of such fund
- the total assets of all funds managed by the investment fund manager that are attributable to Canadian security holders should be less than \$50 million.

We specifically invite comments on the calculations required to monitor these thresholds and whether the thresholds proposed are appropriate.

2. Section 8.29.2 - *Non-resident investment fund manager* – This is a grandfathering exemption for non-resident investment fund managers where neither the investment fund manager nor the investment fund has actively solicited local residents after September 28, 2011.

Notice to clients by non-resident investment fund manager

We are also proposing a new notice requirement in section 14.5.1 of the Regulation. This section would require all international and domestic investment fund managers to provide a notice to investors informing them of its non-resident status, as well as the risk that investors may not be able to enforce legal rights in the province or territory.

We are also proposing a transition period for this notice requirement.

We specifically invite comments from international and domestic investment fund managers on complying with this proposed requirement.

Passport system

Most investment fund managers can rely on the passport system to register in multiple jurisdictions with a single filing with the principal regulator. For more details on how a firm or individuals can register in multiple jurisdictions, please refer to *Policy Statement 11-204 respecting Process for Registration in Multiple Jurisdictions*. We note however, that notification of reliance on the proposed exemption in section 8.29.1 is to be given to each regulator.

2. Unpublished materials

In developing the proposed amendments, we have not relied on any significant unpublished study, report or other written materials.

3. Anticipated costs and benefits

The proposed amendments will make the Regulation and the Policy Statement and the ongoing requirements more targeted, to the benefit of registrants and the investors they serve.

4. Request for comments

We would like your input on the Regulation and the Policy Statement. We need to continue our open dialogue with all stakeholders if we are to achieve our regulatory objectives while balancing the interests of investors and registrants.

All comments will be posted on the Autorité des marchés financiers website at www.lautorite.qc.ca and on the Ontario Securities Commission website at www.osc.gov.on.ca.

All comments will be made publicly available.

Please note that we cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. In this context, you should be aware that some information which is personal to you, such as your e-mail and residential or business address, may appear in the websites. It is important that you state on whose behalf you are making the submission.

Thank you in advance for your comments.

Deadline for comments

Your comments must be submitted in writing by **January 13, 2011**.

Please send your comments electronically in Word, Windows format.

Where to send your comments

Please address your comments to all CSA members, as follows:

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
 Registrar of Securities, Northwest Territories
 Superintendent of Securities, Yukon Territory
 Registrar of Securities, Nunavut

Please send your comments **only** to the addresses below. Your comments will be forwarded to the remaining CSA member jurisdictions.

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5. Where to find more information

We are publishing the proposed amendments with this Notice. The proposed amendments are also available on websites of CSA members, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bsc.bc.ca
www.msc.gov.mb.ca
www.gov.ns.ca/nssc
www.sfsc.gov.sk.ca
www.osc.gov.on.ca