THE INVESTMENT FUNDS INSTITUTE OF CANADA
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA
IFIC

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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
Superintendent 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

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Lindy Bremner
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Dear Sirs / Madames:

Re: Notices and Requests for Comment – Proposed Multilateral Policy 31-202 *Registration Requirements for Investment Fund Managers* and Proposed Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers*

We are writing to provide the comments of the Members of The Investment Funds Institute of Canada to the Proposed Multilateral Policy 31-202 *Registration Requirements for Investment Fund Managers* ("MP 31-202") and Proposed Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers* ("MI 32-102") (collectively the "Proposals"). As our comments discuss the

two Proposals in a comparative manner, we have combined our views on both Proposals into one submission letter.

LACK OF HARMONIZED APPROACH

As an initial remark, we are disappointed that the CSA was unable to agree on a common approach to this issue, and that two groups of jurisdictions have decided to proceed in different directions, creating an un-harmonized system for registration of investment fund managers (IFMs). This is a significant step backwards for the CSA which has so far always been successful in enacting essentially harmonized national instruments regulating the investment management industry in particular.

As you are aware, retail mutual funds are unique in Canada. They are pooled products, most of which are manufactured and managed in one province, and sold in units across the country through registered investment dealers or mutual fund dealers through their network of individual advisors. As funds are always in primary distribution, they are dependent on their ability to be sold across Canada through this process in a seamless and harmonized way.

Mutual funds and their management and their distribution are all individually and thoroughly regulated in all provinces. The prospectuses and fund facts offering documents must be filed and cleared through, and filing fees are paid to the securities commission in each province in which a fund's units will be distributed. Mutual fund prospectuses are also subject to renewal annually, which generates additional filing fees for each province in which funds have been, and will be, distributed.

Of course, dealers that distribute funds must be registered in each province in which they have clients and they are also subject to the rules and regulatory oversight of the securities commissions and self-regulatory organizations. The dealers' sales representatives and advisors are also required to be registered and licensed, and their conduct is subject to another layer of regulatory oversight. Registration fees and SRO membership fees are levied.

Since the enactment of NI 31-103 investment fund managers are also now required to be registered and pay registration fees.

The investment funds industry pays a significant amount of regulatory fees and, as one of the largest financial supporters of the CSA, expects its member regulators to make significant efforts to maintain the efficiency and harmonization of the regulatory structure it has created for national distribution of investment funds. The fact the CSA jurisdictions now offer two divergent proposals on investment fund manager registration is not positive, and we encourage the CSA regulators to make further efforts to agree on a common policy view on this topic.

SPECIFIC CONCERNS WITH THE PROPOSALS

1. MI 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers*

The policy positions proposed in this instrument by Ontario, Quebec, New Brunswick and Newfoundland and Labrador, are of significant concern to our members, as they are not supported by sound principles, in our opinion. There is merit to the basic principle of exempting IFMs where there is no significant connecting factor to the local jurisdiction. However, extrapolating the fact that funds managed by an

IFM in one jurisdiction are being distributed through a dealer in another jurisdiction to be the significant connecting factor to that other jurisdiction, when the manager is performing no administrative or distribution functions in that jurisdiction, is not justifiable and blurs the long-standing regulatory distinction between fund management and fund distribution.

The Proposal would require an IFM to be registered in each province in which it is acting as an investment fund manager, regardless of the physical location in which those activities are actually performed. We would have thought that the fund management activity should be judged by where those functions are taking place, not whether those actions related to a product that is distributed in another jurisdiction.

The IFM registration requirements in NI 31-103, including minimum capital and proficiency thresholds, are uniform across the country. As such, there is no concern that a lesser standard of regulation could be applied in any particular jurisdiction where the IFM is primarily registered. Therefore we cannot comprehend that any additional investor protection benefit would be provided by a requirement to register in other provinces as proposed.

Furthermore there is a significant distinction between managing/administering investment funds and distributing units of investment funds, an activity the CSA has always categorized as "distribution of and trading in securities" for which dealer registration is required. Mutual funds typically do not distribute their units through the funds' manager, rather the manager contracts to have fund units distributed through registered dealers and advisors. IFMs are not typically registered as mutual fund dealers or investment dealers and are not members of either distribution SRO. And what is more, the distribution of mutual funds is already thoroughly regulated by each province in which the funds are offered, there is no added protection to be gained by requiring the registration in each such jurisdiction of the manufacturer as well.

Furthermore, as has been noted by at least one of our Members, the IFM registration requirement in the Securities Act (Ontario), for example, does not make any mention of the requirement being triggered by a non-resident entity *distributing or trading securities* in Ontario. Further, we do not believe that the OSC (and perhaps the other regulators as well) has the authority to amend such a legislative requirement through a reference in a regulatory instrument that is not subject to the lawmaking process.

The proposal does not appear logical to us – in no other industry is the manufacturer of a product required to be registered in each jurisdiction in which its product is distributed. The product may be regulated everywhere it is sold, but the manufacturing process is regulated only in the jurisdiction where it actually takes place.

We are also concerned about the lack of any substantive cost-benefit analysis provided to justify this Proposal. In Ontario, as an example, Section 2.1 of the Securities Act sets out the fundamental principles that the Commission should have regard to in pursuing its objectives under the Act. Principle 6 states that "business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought to be realized." Furthermore, section 143.2(2) of the Act requires that the notice of every rule proposal must include a description of the anticipated costs and benefits of the proposed rule."

To simply state the Proposals "provide clarity and guidance to the industry" and "strike an appropriate balance between providing an efficient system of registration and protecting investors" is self-serving and not based on any apparent quantitative research. The statement makes no mention of the costs to be incurred by IFMs who will experience multiple additional registration fees. In addition, given the divergent directions taken by the two CSA groups on this issue, we cannot agree that any clarity and guidance has been provided; in fact the exact opposite has been created. Inconsistent treatment will be afforded IFMs based on the jurisdictions in which their funds are distributed, and managers will incur additional administrative oversight to ensure they are and remain registered in all jurisdictions where required.

Such benefit statements supporting the Proposal are more puzzling in light of statements published in the proposal issued by the regulators proposing NP 31-202 (described in the next section of this letter). These statements note that the requirement to register as proposed in NI 31-102 would not enhance regulatory oversight and investor protection and would only add additional cost and administrative burden on IFMs. They go on to note that if registration is required in multiple jurisdictions, NI 31-103 provides harmonized regulatory requirements for IFMs and the passport system and interface provide administrative efficiencies.

2. MP 31-202 *Registration Requirements for Investment Fund Managers*

We believe that the jurisdictions proposing MP 31-202 have found the correct policy position as to what constitutes a sufficient connection between the IFM and the jurisdiction to require registration. These provinces have agreed in MP 31-202 that requiring an IFM to register in jurisdictions in which it does not carry out investment fund manager activities does not enhance regulatory oversight or investor protection, and that the regulation of distribution and product oversight through the prospectus review process already provides oversight and tools that more appropriately address risks to investors in those jurisdictions.

Although we agree with the policy direction taken by the jurisdictions proposing MP 31-202, that registration in a province is only triggered if the entity carries on the activities of an IFM within the province, we do share some of our Members' concerns about certain indicia of "acting as an IFM" listed in the Proposal, and similarly seek clarification of the regulators' intention.

We are not at all clear how "marketing the funds" and "arranging for a distribution channel" are IFM activities, as they seem instead to be activities of distribution and trading in securities. The funds cannot market themselves, and the IFM is not directly performing those marketing activities. Should the mere fact an IFM negotiates a contract with a nationally-registered dealer to distribute units of a fund managed by the IFM trigger the requirement for the IFM to register in each province where those units will be distributed? The negotiation is one of the management tasks that the IFM performs from its head office, and not in each jurisdiction. Such activity appears to be too tenuous a connection to those other provinces, especially when the dealer and its advisor network are fully registered in each such province.

In conclusion, we sincerely hope that the CSA jurisdictions will consider these comments and find a way to agree on a common approach that does enhance the clarity and efficiency of the regulatory system for all market participants, as well as tangibly enhance the protection of investors, without duplicating

operating costs for funds that are ultimately be borne by those same investors.

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If you have any questions, regarding anything in this letter please contact Ralf Hensel by phone at 416-309-2314 or by email at rhensel@ific.ca.

Yours truly,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

Joanne De Laurentiis
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