

CSA Staff Notice 31-323**Guidance Relating to the Registration Obligations of Mortgage Investment Entities****February 25, 2011**

On August 20, 2010 each of the members of the Canadian Securities Administrators (the CSA or we) issued parallel orders providing exemptive relief for mortgage investment entities (MIEs) from the investment fund manager registration requirement and the adviser registration requirement under securities legislation until December 31, 2010. This relief was granted to allow each of the CSA members to review the requirement for MIEs to register as investment fund managers and advisers.

On December 3, 2010 all jurisdictions except British Columbia extended the relief until March 31, 2011. British Columbia extended the relief until June 30, 2011.

This Notice is to clarify the registration requirements applicable to MIEs in each of the CSA jurisdictions pursuant to the requirements of National Instrument 31-103 *Registration Requirements and Exemptions* (NI 31-103).

Definition of MIE

In this guidance, the term MIE refers to a person or company whose purpose is to directly or indirectly invest substantially all of its assets in debts owing to it that are secured by mortgages, hypothecs or in any other manner on real property (collectively, “mortgages” for purposes of this guidance), and whose other assets are limited to:

- deposits with a bank or other financial institution
- cash
- debt securities referenced in section 8.21 [*Specified debt*] of NI 31-103
- real property which is directly or indirectly held on a temporary basis as a result of action taken to enforce its rights as a secured lender
- instruments intended solely to hedge specific risks relating to the debts owing to it that are secured by mortgages, hypothecs or in any other manner on real property

Mortgage syndications

A MIE holding an interest in a single mortgage will not typically be subject to the investment fund manager registration requirement where that MIE or a related entity had a role in the creation or syndication of that mortgage (such MIEs are commonly referred to as mortgage syndications).

Pooled MIEs

Investment Fund Manager Registration

The applicability of the investment fund manager registration requirement to a MIE managing a portfolio of mortgages (Pooled MIE) varies in different CSA jurisdictions. Pooled MIEs commonly include “mortgage investment corporations” as defined in the *Income Tax Act* (Canada).

(a) In jurisdictions other than Alberta

In all CSA jurisdictions other than Alberta, a Pooled MIE may or may not be subject to the investment fund manager registration requirement based on the criteria below.

A Pooled MIE will be considered to be an "investment fund" where its primary activity is managing an investment portfolio that includes mortgages. Factors that we would consider relevant to this determination include:

- the Pooled MIE does not take an active role in originating the mortgages that become part of the investment portfolio. and
- the Pooled MIE buys or sells mortgages in accordance with a stated portfolio investment strategy.

A Pooled MIE that is an investment fund must ensure that the person or company that directs its business, operations or affairs is registered as an investment fund manager.

A Pooled MIE will not be considered to be an "investment fund" where its primary activity is mortgage lending, that is, by operating a business that creates and manages mortgages. Factors that we would consider relevant to this determination include:

- the Pooled MIE originates the mortgages in the name of the Pooled MIE directly or through an agent retained by the Pooled MIE and acting on its behalf
- the Pooled MIE funds the mortgages
- the Pooled MIE enters into the mortgage agreements as the mortgagee, and
- the Pooled MIE administers the mortgages, either directly or through an agent acting on its behalf.

The investment fund manager registration requirement will not typically apply in respect of a Pooled MIE that is not an investment fund.

(b) In Alberta

For a Pooled MIE whose principal jurisdiction is Alberta, the above stated analysis with respect to determining whether a Pooled MIE is subject to the investment fund registration requirement does not apply. Instead, a Pooled MIE that has the power to direct and exercises the responsibility of directing the affairs of an “investment fund” as defined in the *Securities Act* (Alberta) will be required to register as an investment fund manager. A Pooled MIE that does

not have the power to direct and does not exercise the responsibility of directing the affairs of an investment fund will not be subject to the investment fund manager registration requirement.

If an entity is uncertain about whether it is subject to the investment fund manager registration requirement, it should consider whether the Pooled MIE is an “investment fund” for the purposes of securities legislation. Sections 7.3 of Companion Policy 31-103CP *Registration Requirements and Exemptions* (31-103CP) and 1.2 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* provide guidance on the general nature of investment funds.

Adviser Registration

A person or company that advises a Pooled MIE that is an investment fund as to the investing in or the buying or selling of mortgages or other securities will be subject to the adviser registration requirement if it is in the business of advising in securities. A person or company that advises a Pooled MIE that is not an investment fund should consider whether it is in the business of advising in securities as outlined in the guidance in section 1.3 of 31-103CP and, on that basis, required to register.

We will consider applications from advisers to Pooled MIEs for discretionary exemptions from the prescribed portfolio manager proficiencies. If exempted, an adviser will typically be registered as a restricted portfolio manager, with terms and conditions limiting its registration to advising in respect of the Pooled MIE’s activities.

In jurisdictions where mortgage broker legislation prescribes proficiency requirements for MIEs, we may consider those to be acceptable alternatives to the proficiency requirements in securities legislation. Such exemptions from the proficiency requirements will also be considered in jurisdictions that do not have mortgage broker legislation that prescribes proficiency requirements applicable to MIEs.

Dealer Registration

In all CSA jurisdictions except British Columbia, a MIE or any other person or company trading its securities will be subject to the dealer registration requirement if it is in the business of trading in securities. If a MIE or any other person or company trading its securities is uncertain about whether it must register as a dealer, it should consider whether it is in the business of trading in securities as outlined in the guidance in section 1.3 of 31-103CP.

In British Columbia, a MIE will not be subject to dealer registration until BC Instrument 32-517 in British Columbia expires on June 30, 2011. The British Columbia Securities Commission will be issuing further guidance about the dealer registration requirement for MIEs in B.C. prior to June 30, 2011.

Questions

If you have questions regarding this Notice please direct them to any of the following:

Michael Brady
Senior Legal Counsel, Capital Markets Regulation
British Columbia Securities Commission
Tel: 604-899-6561
1-800-373-6393
mbrady@bcsc.bc.ca

Navdeep Gill
Legal Counsel, Market Regulation
Alberta Securities Commission
Tel: 403-355-9043
navdeep.gill@asc.ca

Curtis Brezinski
Compliance Auditor
Saskatchewan Financial Services Commission
Tel: 306-787-5876
curtis.brezinski@gov.sk.ca

Chris Besko
Legal Counsel, Deputy Director
The Manitoba Securities Commission
Tel. 204-945-2561
Toll Free (Manitoba only) 1-800-655-5244
chris.besko@gov.mb.ca

Christopher Jepson
Senior Legal Counsel
Compliance and Registrant Regulation
Ontario Securities Commission
Tel: 416-593-2379
cjepson@osc.gov.on.ca

Sophie Jean
Conseillère en réglementation
Surintendance de l'assistance à la clientèle, de l'indemnisation et de la distribution
Autorité des marchés financiers
Tel: 514-395-0337, ext. 4786
Toll-free: 1-877-525-0337
sophie.jean@lautorite.qc.ca

Brian W. Murphy
Deputy Director, Capital Markets
Nova Scotia Securities Commission
Tel: 902-424-4592
murphybw@gov.ns.ca

Susan Powell
Senior Legal Counsel
New Brunswick Securities Commission
Tel: 506-643-7697
susan.powell@nbsc-cvmnb.ca

Katharine Tummon
Superintendent of Securities
Prince Edward Island Securities Office
Tel: 902-368-4542
kptummon@gov.pe.ca

Craig Whalen
Manager of Licensing, Registration and Compliance
Office of the Superintendent of Securities
Government of Newfoundland and Labrador
Tel: 709-729-5661
cwhalen@gov.nl.ca

Louis Arki, Director, Legal Registries
Department of Justice, Government of Nunavut
Tel: 867-975-6587
larki@gov.nu.ca

Donn MacDougall
Deputy Superintendent, Legal & Enforcement
Office of the Superintendent of Securities
Government of the Northwest Territories
Tel: 867-920-8984
donald.macdougall@gov.nt.ca

Frederik J. Pretorius
Manager Corporate Affairs (C-6)
Dept of Community Services
Government of Yukon
Tel: 867-667-5225
Fred.Pretorius@gov.yk.ca