

**Q-Why have LAS and CHUMS issued a restated Agreement to all investors?**

In September of 2009 National Instrument 31-103; Registration Requirements and Exemptions came into effect. The CSA suggests the adoption of the Instrument will: “harmonize, streamline and modernize registration requirements across Canada for firms and individuals who sell securities (and exchange contracts in some jurisdictions), offer investment advice or manage investment funds.

ONE staff reviewed the pending amendments to interpret the manner in which the new requirements would apply to the ONE Investment Program (if at all). If it was deemed that ONE was an “investment fund manager” as defined in the new registration rules, ONE would be subject to additional working capital, insurance, audit requirements as well as financial reporting, recordkeeping, compliance obligations and proficiency standards. ONE has always operated as a co-investment structure and not an investment fund, but still the consequences of the registration interpretation could have onerous and costly implications for the operation of the program, and ultimately the investors.

**Q-Has a review of National Instrument 31-103 been completed by One? Is it applicable to the program?**

Staff retained the services of legal counsel to provide their opinion on the application of the new requirements on the ONE Investment Program. Borden Ladner Gervais LLP concluded that:

- The ONE Investment Program was formed as a co-investment structure under which municipalities appoint CHUMS and LAS as their agent to make arrangements for the investment of their municipal assets in accordance with certain investment mandates.
- The Agency Agreement which establishes the Investment Program with each investor should be revised to reflect the true nature of the Program as a co-investment structure by removing all possible references to the word “fund” as the language in the current Agreement could cause regulators to take an incorrect view that the Program is a “mutual fund” as defined. This would be problematic as municipalities are not permitted to invest in mutual funds, and the One Program has never operated as a “fund”.
- The Program is neither a “security” nor an “investment fund” as defined in the Act. As a result, the New Rules will not impact the Program.

**Q-What actions has One taken to ensure the safe and accountable operation of the program?**

LAS and CHUMS have issued a restated Agency Agreement for each investor that includes the deletion of the word “fund” throughout the document, where appropriate. This is intended to protect the Program and its investors from registration with the securities commission as well as the onerous and costly regulatory compliance issues connected to that registration.

**Q-What happens if the Amended and Restated Agency Agreement is not signed by the investor?**

LAS and CHUMS (and our legal counsel) are of the opinion that not signing the restated agreement will have no effect on the ongoing relationship with the investor and The ONE Investment Program. Section 5.04 of the original agency agreement, with respect to amendments reads: “The

Agent may from time to time, upon providing 30 days prior written notice to all Investors, amend the Agreement by adding schedules.” Accordingly “Schedule F” (sent to each investor along with the revised agreement in March 2010) has the effect of amending the original agency agreement and leaves the investor and The One Investment Program bound by the restated agreement.

For the purposes of continuity and consistency between the investor and The One Investment Program, our legal counsel recommended that we have restated agreements signed by all program investors.

**Q-What did ONE’s legal counsel say about having investors sign the restated agreement?**

BLG is of the opinion that changes to the Agency Agreement “do not constitute a material change.” They go on further to discuss the delegation of authority to an individual if in the opinion of the council of the municipality, “the power being delegated is of a minor nature.” Each investor should examine your delegation by-law to determine if the treasurer can sign the new agreement without referring the matter to council. If the One Program’s model by-law was used then your by-law should accommodate the signing of the restated agreement.

**Q-Is there a need to pass a new by-law as we sign the agreement?**

Technically a new by-law is not required. The agency agreement has been amended through the addition of a schedule to the original agreement as is permitted in the original agreement.

If your original by-law or resolution is substantially the same as the current sample By-law for the program then a new By-law would not be required. The investor by-law or resolution must only include verbiage similar to the following:

“The Treasurer is hereby authorized and directed to enter into and execute the Agency Agreement with LAS and CHUMS (or The One Investment Program) and any other necessary documents, including without limitation, enrolment documents and documents in connection with payment services for the Portfolios, and to do anything necessary or desirable, on behalf of the Corporation”.

The One Investment Program however cannot give legal advice to investors and asks that each individual investor, should they feel obliged, seek their legal opinion on this matter.

**Q-We have updated the Certificate of Treasurer and Authorization for provision of investment direction by email forms. They are both signed by our Treasurer. Is this sufficient, or do you need the Head of Council’s signature as well?**

Previous versions of the sample by-law gave the treasurer the authority “to enter into and execute the Agency Agreement and any other necessary documents, including without limitation, enrolment documents and documents in connection with payment services for the Portfolios, and to do anything necessary or desirable” related to the One Program. Therefore, only his/her signature is required on the documentation.

**Q- We are asked to 'execute two copies of the revised agreements'. However, the only place I can find for our signature is on Page 11. Is this where the Treasurer is supposed to sign? Do we need 2 signatures?**

Only the Treasurer is required to sign on the "By" line and fill in the balance of the required information; print name, title, and the organizations name. Send two executed copies of the agreement back to One for execution. One fully executed copy will be forwarded back to you for your records.