



CSA Staff Publish Staff Notice Regarding Transition into the New Registration Regime

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On June 12, 2009, the staff of the Canadian Securities Administrators (the "CSA Staff") published CSA Staff notice 31-111 – Proposed National Instrument 31-103 *Registration Requirements and Exemptions* ("NI 31-103"), Transition into the New Registration Regime (the "Staff Notice"). The Staff Notice describes how the CSA Staff and the Investment Industry Regulatory Organization ("IIROC") foresee transitioning firms and individuals from the existing registration regime to the new registration regime under NI 31-103. The CSA Staff will seek final approval of NI 31-103 and expect to publish a final version of the instrument on or about July 17, 2009, with an effective date of on or about September 28, 2009 (the "Effective Date").

The Staff Notice does not discuss the substantive requirements of NI 31-103; instead it describes (i) the National Registration Database (the "NRD") freeze period, (ii) the conversion of existing categories of registration for firms and individuals to new categories of registration, and (iii) transition timelines to allow firms and individuals to adjust to, and comply with, the new requirements. IIROC has published its own notice regarding the conversion of registration categories as a supplement to the Staff Notice. The IIROC notice is available on IIROC's website at www.iroc.ca.

NRD Freeze Period

The NRD will be shut down temporarily from September 25, 2009 to October 12, 2009 (the "Freeze Period") in order to permit the conversion of (i) existing categories of registration to the new categories of registration under NI 31-103, and (ii) existing forms to the proposed revised forms under the proposed revised National Instrument 33-109 *Registration Information*.

During the Freeze Period, authorized firm representatives would be unable to create new submissions via NRD as they would have read-only access during such time.

Firms are required to submit all restatements, terminations for cause, and changes in civil, criminal and financial information in paper format using the

forms under NI 33-109 and will have to re-file these notices on NRD after the Freeze Period, but in any event no later than November 10, 2009. All other notices that would otherwise have been submitted during the Freeze Period must be submitted no later than November 24, 2009. Applications approved during the Freeze Period must be refiled on NRD no later than November 10, 2009.

Applications submitted to the regulator but not approved prior to NI 31-103 coming into force are to be withdrawn from NRD, and such applicants will be required to re-apply using the new forms as prescribed under NI 33-109 and in compliance with NI 31-103.

Applications that are in progress but not yet submitted prior to the Freeze Period are to be deleted by the system.

In order to increase the likelihood that applications are processed before NI 31-103 comes into force, CSA Staff recommends that applications be submitted well in advance or before: (i) June 26, 2009 in respect of firm applications; (ii) July 15, 2009 in respect of individual applications for registration with an adviser; and (iii) August 14, 2009 in respect of individuals for registration with an existing firm in any category other than adviser.

Conversion

CSA Staff propose to convert existing categories of registration for firms and individuals to new categories of registration during the Freeze Period. Certain categories of registration are to be eliminated under NI 31-103 which will result in the firm no longer being registered. Appendix A to the Staff Notice provides further details regarding the conversion of categories of registration.

Under NI 33-109, the definition of "permitted individual" is to be amended to capture only the mind and management that directly influence the firm. All individuals who meet the current definition of "permitted individual" will be converted during the Freeze Period. Those officers that would not meet the revised definition of "permitted individual" are to surrender the permitted activity or be terminated as permitted individuals after the Effective Date. Such surrender or termination filings should not be made during the Freeze Period. Such individuals are to be removed from NRD by December 31, 2009 in order to

avoid non-refundable NRD user fees for these individuals.

Transition Timelines

CSA Staff have recommended transition periods to permit firms and individuals to comply with the new registration requirements. If a firm fails to meet such prescribed timelines, it must cease to carry on business until all requirements under NI 31-103 are met.

Firms Registered Before the Effective Date

(i) Generally

For firms registered before the Effective Date, CSA Staff recommend the following transition periods:

- 3 months to designate and apply for registration for Ultimate Designated Person and Chief Compliance Officer;
- 6 months to satisfy bonding or insurance requirements;
- 6 months to comply with referral arrangement requirements;
- 12 months to deliver relationship disclosure information to clients;
- 12 months to satisfy capital requirements and notify the regulator of subordination agreement; and
- 24 months to ensure that independent dispute resolution or mediation services are available to clients.

Where a firm has obtained discretionary relief relating to registration requirements before the Effective Date, such firm would be exempt from any substantially similar provision under NI 31-103.

(ii) Mutual Fund Dealers

Mutual Fund Dealers have 24 months to comply with the requirement to deliver client statements.

(iii) International Dealers

A firm registration in the International Dealer category (in Ontario and Newfoundland and Labrador category only) is to be revoked immediately, and such firms will have 1 month to submit a completed Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service* ("Form 31-103F2").

(iv) International Advisers and Portfolio Manager & Investment Counsel (Foreign)

Firms registered in the International Adviser Category (Ontario category only) or the Portfolio Manager & Investment Counsel (Foreign) category (Alberta category only) will have 12 months to submit a completed Form 31-103F2.

During the 12 month period, registrants in such categories may continue to operate under the conditions of their registration but would be converted to a Portfolio Manager during the Freeze Period. Such registration would then be revoked at the end of the 12 month period. During this transition period, the firm must consider whether their business would operate under the circumstances of the applicable exemption in NI 31-103 or whether they wish to be registered as a Portfolio Manager.

Individuals Registered Before the Effective Date

(i) Generally

An individual registered (and who continues to be registered) as a dealing representative of a mutual fund dealer, an advising representative of a portfolio manager, an associate advising representative of a portfolio manager or an advising representative subject to the terms and conditions of registration equivalent to the scope and authority of an associate advising representative under NI 31-103, will not be required to satisfy the formal proficiency requirements. However, an individual registered as a dealing representative of a scholarship plan dealer or of an exempt market dealer transitioning from the limited market dealer category in Ontario and Newfoundland and Labrador will have 12 months to satisfy the formal proficiency requirements and the NRD record must be updated to reflect same.

Where an individual has obtained discretionary relief relating to registration requirements before the Effective Date, such individual will be exempt from any substantially similar proficiency requirements under NI 31-103.

(ii) Exempt Market Dealers

An individual designated as the Chief Compliance Officer will have 12 months to satisfy proficiency requirements and update the NRD record to reflect same.

(iii) Portfolio Manager (Pre-approval of Advise for Associate Advising Representatives)

CSA Staff has not recommended a transition for the requirement to pre-approve advice of an associate advising representative. A firm must advise the regulator of the names of the advising representative and associate advising representative subject to the designation within seven days of designation.

Firms and Individuals Not Required to Register Before the Effective Date, but Required to Register under NI 31-103

(i) Generally

Subject to the exemptions below, where a firm or individual makes an application for registration after the Effective Date, all applicable requirements under NI 31-103 must be met at the time of such applicants' application.

(ii) Exempt Market Dealers (Other than Ontario and Newfoundland and Labrador)

Firms who are acting as Exempt Market Dealers prior to the Effective Date have 12 months to apply for registration and comply with the requirements under NI 31-103.

In Ontario and Newfoundland and Labrador, firms currently registered as Limited Market Dealers will automatically be converted to Exempt Market Dealers on the Effective Date, and will be subject to the transition periods set out above.

(iii) Investment Fund Managers

Investment Fund Manager firms with a head office in Canada and that are active prior to the Effective Date have 12 months to apply for registration in the jurisdiction where its head office is located and 24 months to apply for registration in other applicable Canadian jurisdictions.

Investment Fund Manager firms with a head office outside Canada have 24 months to apply for registration whether or not it is active prior to the Effective Date.

The Canadian Securities Administrators plan to publish a proposal explaining when an investment fund manager that has its head office outside Canada would need to register, and when an investment fund manager that has its head office in Canada and is registered in that jurisdiction, would need to register in other Canadian jurisdictions.

This update is intended as a summary only and should not be regarded or relied upon as advice to any specific client or regarding any specific situation.

If you would like further information regarding the issues discussed in this update or if you wish to discuss any aspect of this commentary, please feel free to contact us.

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