

Registration Reform

IN CANADA
The Finish Line is Here

Section G of Stikeman Elliott's Report on Canada's New Registration Regime
JULY 2009

**Impact on Investment Dealers
and Mutual Fund Dealers**



Impact on Investment Dealers and Mutual Fund Dealers

Investment dealers and mutual fund dealers are generally required to be members of, and so subject to the regulations of, the Investment Industry Regulatory Organization of Canada (IIROC) or the Mutual Fund Dealers Association of Canada (MFDA), which are self regulatory organizations (SROs).

Members of SROs are exempt from a number of the requirements of National Instrument 31-103 *Registration Requirements and Exemptions* (31-103) (but only in respect of their registration as an investment dealer or mutual fund dealer) including:

- capital and insurance requirements;
- financial reporting requirements;
- certain know your client requirements (for IIROC members only);
- certain suitability requirements;
- restrictions on lending to clients or providing margin (for IIROC members only); and
- certain disclosure requirements.

They are not exempt from other requirements, including:

- requirements relating to complaint handling and referral arrangements;
- the conflicts of interest provisions because 31-103 includes outcome-based requirements that apply to registrants in all categories, whether or not they are SRO members; and
- the requirements relating to statements of account and portfolio statements.

In Quebec, firms and individuals in the mutual fund and scholarship plan sectors are subject to the following regulatory regime, the requirements of which include:

- mutual fund dealers registered only in Quebec are not required to be members of the MFDA;
- mutual fund dealers and scholarship plan dealers registered only in Quebec are under the direct supervision of the Autorité des marchés financiers;
- individual representatives of mutual fund dealers and scholarship plan dealers registered in Quebec are required to be members of the Chambre de la sécurité financière;
- mutual fund dealers and scholarship plan dealers registered in Quebec and their individual representatives registered in Quebec must maintain professional liability insurance;
- mutual fund dealers and scholarship plan dealers registered in Quebec must contribute to the Fonds d'indemnisation des services financiers, which provides financial compensation to investors who are victims of fraudulent tactics or embezzlement committed by these firms or individuals; and
- individuals who are representatives of an investment dealer cannot be employed by a financial institution and carry on business at the same time as a representative in a Quebec branch of a financial institution unless they specialize in mutual funds or scholarship plans.

In Quebec mutual fund dealers which comply with applicable Quebec regulations are exempt from certain requirements in 31-103.

SRO Rule Amendments

The Canadian Securities Administrators (CSA) are working with both SROs to try to harmonize 31-103 and SRO rules. It is intended that the SRO rules will be amended as of the implementation of 31-103.

IIROC Registration Reform Rule Amendments

On July 17, 2009 IIROC published (in IIROC Notice 09-0213 – Rules Notice – Notice of Approval by IIROC Board – *IIROC Dealer Member Rule Amendments to Implement the CSA's Registration Reform Project*) amendments to its Dealer Member Rules that are related to the implementation of 31-103. These amendments were approved by the IIROC Board on June 25, 2009 and are subject to final approval by applicable CSA members.

These amendments seek to modernize registration related requirements applicable to its Dealer Members, moving, to the extent reasonable, to a more principles-based approach. IIROC has also sought to harmonize these rules to 31-103. The amendments include:

- a simplification of approval categories, reducing the number from 46 to 9;
- merging supervisory categories and the implementation of a principles-based approach to supervision; and

- limiting partner, director and officer registration to those individuals fulfilling executive management functions.

On April 24, 2009, IIROC published for second comment proposed amendments to its Dealer Member Rules to establish substantive requirements developed under the Client Relationship Model (CRM) Project (IIROC Notice 09-0120 – Rules Notice – Request for Comments – Dealer Member Rules – *Client Relationship Model*). The CSA have stated that they will be working with IIROC and the MFDA to harmonize proposed Client Relationship Models and 31-103.

MFDA Registration Reform Rule Amendments

It is expected that the MFDA will be publishing amendments to its rules that are related to the implementation of 31-103. It is also expected that the MFDA will issue guidance to its members on the requirements that apply during the interim period between the implementation of 31-103 and the adoption of consequential MFDA rule amendments.

The MFDA published for second comment proposed amendments to its rules to implement CRM proposals on April 27, 2009 (MFDA Bulletin #0370-P)

Registration Reform in Canada:

The Finish Line is Here

Canada's new registration rule was published by the Canadian securities administrators in final form on July 17, 2009.

The new regime is expected to be in force September 28, 2009 with transition periods for implementation of aspects varying. The new regime, which has been several years in the making, is intended to harmonize, streamline and modernize registration requirements and exemptions across all Canadian jurisdictions. It regulates dealers and advisers, effectively eliminating the dealer registration exemption for trading in the exempt market in Canada, and imposes a new registration requirement for investment fund managers.

The new regime has significant implications for Canadian and non-Canadian market participants, particularly those now doing business on an unregistered or exempt basis.

This document is one part in a series that details the regime and its impact on particular types of market participants and their business activities. The complete document includes the following sections:

- A** Overview of Canada's New Registration Regime
- B** Impact on Limited Market Dealers and Unregistered Dealers Trading in the Exempt Market
- C** Impact on Investment Fund Managers
- D** Impact on Portfolio Managers and Investment Counsel
- E** Impact on International Dealers and Non-Canadian Dealers Trading in the Exempt Market
- F** Impact on International Advisers
- G** Impact on Investment Dealers and Mutual Fund Dealers
- H** Impact on Issuers Generally
- I** Impact on Investment Funds
- J** Impact on Private Equity and Venture Capital Funds
- K** Impact on Non-Canadian Investment Funds Privately Placing Securities in Canada
- L** New Compliance Requirements for Registrants
- M** Registering in Multiple Jurisdictions
- N** Quebec's *Derivatives Act*
- O** Trading or Advising in Commodity Futures
- P** Useful Links

If you would like a copy of any of the other sections, in electronic or print format, please contact your Stikeman Elliott representative, email us at info@stikeman.com or visit our website at www.stikeman.com

Canadian Business Law – Worldwide

Stikeman Elliott is recognized nationally and internationally for the sophistication of its business law practice. The firm is a Canadian leader in each of its core practice areas – corporate finance, M&A, securities, banking, corporate-commercial, real estate, tax, insolvency, structured finance, competition, intellectual property, employment and business litigation – and has developed in-depth knowledge of a wide range of industries.



London-based *World Finance* magazine named Stikeman Elliott as the *2008 Best Corporate & Commercial Team in Canada*. Additionally, the *International Financial Law Review* honoured Stikeman Elliott as *2007 National Law Firm of the Year (Canada)*, while Chambers Global identifies it as one of Canada's two top-tier Corporate/M&A practices. The firm is frequently ranked among Canada's leaders in domestic and cross-border M&A and corporate finance league tables. The National Litigation Group, whose specializations include class actions, securities litigation and restructurings, has been ranked among the top three business litigation practices in Canada by Lexpert. Among Stikeman Elliott's other highly regarded practices are competition/antitrust (named as a leader by the *Global Competition Review*), taxation (highly ranked by Lexpert) and structured finance (widely considered to be Canada's foremost practice in that field).

The firm's clients can expect a consistently high level of service from each of its eight offices who work together on major transactions and litigation files, and regularly collaborate with prominent U.S. and international law firms on cross-border transactions of global significance. The firm has invested heavily in leading-edge knowledge management systems in order to assure our clients of advice of the highest quality, grounded in the accumulated expertise of Stikeman Elliott's national and international practice.

STIKEMAN ELLIOTT

MONTRÉAL TORONTO OTTAWA CALGARY VANCOUVER NEW YORK LONDON SYDNEY

www.stikeman.com