

Registration Reform

IN CANADA
The Finish Line is Here

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

Impact on Investment Funds



Registration Reform IN CANADA

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Impact on Investment Funds

The final proposal for National Instrument 31-103 *Registration Requirements and Exemptions* (31-103) and the related amendments to the provinces and territories' Securities Acts and other instruments and policies do not impose any kind of registration or qualification requirements on investment funds per se. The impact on such funds generally will be through the new and enhanced requirements for registered firms, particularly the registration requirements for investment fund managers and the dealer registration requirement that applies to persons in the "business of trading" in securities. The requirement to register as an investment fund manager is not based on the type of investment fund that is managed. It applies equally to investment fund managers of funds that are reporting issuers and those that are not. See the discussion under the topic Impact on Investment Fund Managers.

Dealer Registration Requirement

As an issuer of securities, often in continuous distribution, an investment fund may be in the business of trading in securities and thus subject to the requirement to register as a dealer. 31-103 includes an exemption from the requirement to register as a dealer for a person or company in respect of a trade by the person or company if the trade is made solely through an agent that is a registered dealer. The Canadian Securities Administrators (CSA) note in Companion Policy 31-103CP *Registration Requirements and Exemptions* that this exemption is not available for trades where an intermediary is involved and that it is only available where a person trades their own securities directly with a registered dealer. There are also dealer registration exemptions for an investment fund (as well as the investment fund manager) in respect of dividend or distribution reinvestment plans or optional investment plans of the investment fund or for certain additional investments by fund security holders.

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Other Matters

From the investment fund's perspective, there are a few other matters to note:

- where net asset value adjustments occur in respect of a fund, as part of the investment fund manager's financial reporting to the regulator, the investment fund manager will be required to include a report of the net asset value adjustments, including:
 - the cause of the adjustments,
 - the dollar amount of the adjustments, and
 - the effect of the adjustments on net asset value per unit or share and any corrections made to purchase and sale transactions affecting either the investment fund or securities holders of the investment fund,
- while investment fund managers are generally subject to the conflict of interest provisions of 31-103, the obligation to identify existing material conflicts of interest with clients and to resolve them and, in some cases, to disclose them to clients does not apply to an investment fund manager in respect of an investment fund that is subject to National Instrument 81-107 *Independent Review Committees for Investment Funds*. This rule applies to investment funds that are reporting issuers; and
- various prohibitions are consolidated in 31-103, and 31-103 includes a prohibition on registered advisers knowingly causing inter-fund trades to be made between investment portfolios managed by it, including those of investment funds for which the adviser acts as portfolio manager.

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

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