

Registration Reform

IN CANADA
The Finish Line is Here

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

Impact on Issuers Generally



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For issuers generally, 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 should have a modest impact.

Dealer Registration Requirement

The removal of the requirement that a person trading in securities be registered as a dealer, or have the benefit of a dealer registration exemption and the imposition of a "business trigger", should simplify matters for issuers that occasionally trade in securities (for investment purposes, as part of a reorganization or to raise additional capital) in that they would not need to identify a dealer registration exemption for every trade they make. An issuer that is in the "business of trading" in securities, however, would generally be subject to the dealer registration requirements under the new regime. Whether or not an issuer's activities would be considered to constitute the business of trading in securities is something that an issuer should canvass with its counsel.

The Canadian Securities Administrators (CSA) have provided some guidance on how they interpret the business trigger in the context of issuers in Companion Policy 31-103CP *Registration Requirements and Exemptions* (31-103CP) where it is noted that:

- in general, securities issuers with an active non-securities business do not have to register as a dealer if they:
 - do not hold themselves out as being in the business of trading in securities;
 - trade in securities infrequently;
 - are not, or do not expect to be, compensated for trading in securities;
 - do not act as intermediaries; and
 - do not produce, or intend to produce, a profit from trading in securities.

- securities issuers may have to register as dealers if they:
 - frequently trade in securities;
 - employ or otherwise contract individuals to perform activities on their behalf that are similar to those performed by a registrant (other than underwriting in the normal course of a distribution or trading for their own account);
 - solicit investors actively; or
 - act as an intermediary by investing client money in securities.

Dealer Registration Exemptions

31-103 includes:

- dealer registration exemptions in respect of trades if (1) made solely through an agent that is a registered dealer, or (2) made to a registered dealer that is purchasing as principal. The CSA note in 31-103CP 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; and
- dealer registration exemptions for an investment fund or an issuer generally in respect of dividend or distribution reinvestment plans or optional investment plans or, for an investment fund, certain additional investments by fund security holders.

Prospectus Exemptions

As part of the registration reform project, changes are also being made to National Instrument 45-106 *Prospectus and Registration Exemptions* (45-106) and OSC Rule 45-501 *Ontario Prospectus Registration Exemptions* (45-501), as well as related rules and provisions of securities legislation cross country. The changes to these rules relate largely to the removal of the current dealer registration exemptions, which will no longer apply. There is no change to the trigger for the prospectus filing and delivery requirement. It remains the “distribution” of a security. An issuer distributing securities will need to identify a prospectus exemption for the distribution or file and deliver a prospectus. The prospectus exemptions are for the most part unchanged so, for example, an issuer will still have a prospectus exemption for trades with an “accredited investor”. As there are some changes to these rules, and there are still some differences in approach among the jurisdictions, issuers will want to canvass with their advisers the prospectus exemptions that may be available under the amended rules and legislation for future distributions.

See also the discussion under the topics Impact on Investment Funds and Impact on Private Equity and Venture Capital Funds for more information about the impact of 31-103 on these types of issuers.

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
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- 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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