

Registration Reform

IN CANADA
The Finish Line is Here

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

New Compliance Requirements for Registrants



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L

New Compliance Requirements for Registrants

National Instrument 31-103 – *Registration Requirements and Exemptions* (31-103) sets out registration requirements, including proficiency (for individual registrants) and capital and insurance requirements, as well ongoing compliance requirements applicable to registrants. These include rules governing reporting, account opening and documentation, leverage disclosure, recordkeeping, know your client and suitability obligations, complaint handling, conflicts of interest, client disclosure and the regulation of referral arrangements. The approach taken is a combination of principles-based requirements and prescriptive rules.

31-103 provides certain exemptions from certain of these requirements for a registrant that is an investment fund manager, for a registrant that is a member of a self-regulatory organization (SRO) (e.g. an investment dealer or mutual fund dealer) and is subject to SRO rules that deal with the same subject matter, and for a registrant that is dealing with “permitted clients”.

31-103 extends the application of a number of existing requirements that apply to current categories of registrants to other types of registrants. 31-103 also provides a number of new or expanded requirements, including:

- moving to exam-based instead of course-based individual proficiency requirements;
- a requirement that all registrants appoint an ultimate designated person and a chief compliance officer;
- increased capital requirements for most non-SRO registrants;
- moving from pre-set insurance amounts to a formula-based method for determining insurance requirements;

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- a requirement for registrants to file financial statements with regulators more frequently and on an unconsolidated basis; (The Canadian Securities Administrators (CSA) have separately indicated the intention to require registrants to comply with international financial reporting standards in 2011.);
- a requirement for investment fund managers to file with the regulators, together with their financial statements, a description of any net asset value adjustment made during the period;
- new requirements with respect to the preparation and delivery of client statements;
- a requirement for registrants (other than investment fund managers and SRO members) to provide to a client “relationship disclosure information”, which is to be all information that a reasonable investor would consider important about the client’s relationship with the registrant and is to include various items such as disclosure of the compensation paid to the registered firm in relation to the different types of products that a client may purchase through it, a description of risks that should be considered a description of applicable client reporting and a description of the conflicts of interest that the registered firm is required to disclose under securities legislation;
- a requirement for registrants to document and, in a manner that a reasonable investor would consider fair and effective, respond to complaints with respect to products and services, and to make an independent dispute resolution or mediation service available at the registrant’s expense;
- requirements for entering into referral arrangements, including prescribed disclosure to clients and the requirement for the referring party and recipient of the referral to enter into a written agreement;
- prohibitions on “tied selling” and unnecessary mandatory financial institution settlement arrangements;
- requirements with respect to identifying and responding to material conflicts of interest and potential material conflicts of interest as well as requirements with respect to disclosure for certain specified conflicts of interest; and
- requirements for 30 days’ advance notice to regulators if a registrant is going to acquire directly or indirectly, beneficial ownership or control of a security of a registrant or acquire all or a substantial part of the assets of a registrant. Similar notification requirements apply to a registered firm that believes 10% or more of a class of its voting or equity securities may be acquired. Regulators may object to the acquisition. An exemption is available for acquisition that results in a holding of less than 10% of a class of listed securities.

Firms registered in more than one category are required to comply with the highest capital requirements and with conduct requirements that apply to the registrable activity being conducted.

Companion Policy 31-103CP *Registration Requirements and Exemptions* provides guidance on the general principles set out in 31-103 with respect to

matters such as internal controls and systems, compliance systems, maintenance of books and records, know your client and suitability obligations and identifying and addressing material conflicts of interest.

Continuous Registration

Registration will no longer have to be renewed annually, and will remain in effect until suspended or terminated by certain triggering events, including non-payment of annual fees and failure to comply with fit and proper requirements and conduct rules under 31-103.

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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