Registration Reform in Canada
The Finish Line is Here

Section M of Stikeman Elliott’s Report on Canada’s New Registration Regime
JULY 2009

Registering in Multiple Jurisdictions
Registering in Multiple Jurisdictions

The requirements and procedures for applying for registration in more than one Canadian province or territory (jurisdiction) are currently set out in National Instrument 31-101 *National Registration System* and National Policy 31-201 *National Registration System* (collectively, NRS). NRS will be repealed and replaced with a “passport system” for registrants, effective as of the date National Instrument 31-103 *Registration Requirements and Exemptions* (31-103) comes into force. 31-103 is scheduled to come into force on September 28, 2009 (the Implementation Date), subject to government and other local approvals in each jurisdiction. The adoption of the passport system for registration will be facilitated by 31-103 as registration categories and requirements will become more uniform across Canada.

All members of the Canadian Securities Administrators (CSA), other than the Ontario Securities Commission (OSC), (the passport regulators) have implemented Multilateral Instrument 11-102 *Passport System* (11-102). The passport system gives market participants, in the main areas of securities legislation, access to the capital markets in multiple jurisdictions while generally only needing to deal with one principal regulator. Although the OSC has not adopted 11-102, it can be a principal regulator under the passport system. Effective as of the Implementation Date, the passport regulators are implementing amendments to 11-102, and together with the OSC, are adopting National Policy 11-204 *Process for Registration in Multiple Jurisdictions* (11-204), which will extend the passport system to registration (other than for restricted dealer firms). Firms and individuals will generally be able to register in more than one jurisdiction by dealing only with their principal regulator. Firms and individuals that register in their principal jurisdiction through the Investment Industry Regulatory Organization of Canada (IIROC) will continue to do so.
Identifying Principal Regulator

The principal regulator is the regulator in the applicable “principal jurisdiction”.

A firm’s principal jurisdiction is the jurisdiction of its head office within Canada. If the head office is outside Canada (a foreign firm), the principal jurisdiction is: (1) if the firm is not already registered in a jurisdiction or has not completed its first financial year since being registered, the jurisdiction in which the firm expects most of its clients to be resident at the end of its current financial year, or (2) if the firm is already registered in a jurisdiction and has completed its first financial year, the jurisdiction in which most of the firm’s clients were resident at the end of its most recently completed financial year.

If prior to the Implementation Date a foreign firm is registered in more than one jurisdiction, it must, no later than October 28, 2009, submit to its principal regulator Form 33-109F5 Change of Registration Information identifying its principal jurisdiction.

An individual’s principal jurisdiction is where the individual has his or her working office (which is the office of the sponsoring firm where an individual does most of his or her business), unless the individual’s working office is outside Canada. If the working office of an individual is outside Canada (a foreign individual), his or her principal jurisdiction is the principal jurisdiction of the individual’s sponsoring firm.

If a regulator is of the view that the principal regulator identified by the firm or individual is inappropriate, the regulator will give the firm or individual written notice of the new principal regulator and the reasons for the change.

We note the principal regulator may differ for applications for exemptive relief from registration requirements.

Registration Process

Passport Registration

If a person (a firm or individual) is seeking registration or is registered in its principal jurisdiction (including Ontario) and seeks registration in another jurisdiction (excluding Ontario), this is referred to as a “passport registration”. Under a passport registration, a firm is only required to submit Form 33-109F6 Firm Registration (F6) and any supporting documentation to its principal regulator. An individual seeking registration under a passport registration is required to submit Form 33-109F4 Registration of Individuals and Review of Permitted Individuals (F4) or if applicable Form 33-109F2 Change or Surrender of Individual Categories (F2) on the electronic National Registration Database (NRD). Only the principal regulator reviews these submissions.

If the registration is approved in the principal jurisdiction, the registration sought in the non-principal passport jurisdiction is automatically granted provided, if required for that category of registration, the person is a member or approved person of a self regulatory organization (SRO). For a mutual fund dealer whose principal jurisdiction is Quebec, the firm must be a member of the Mutual Fund
Dealers Association of Canada (MFDA) before it can become registered in another jurisdiction. For a representative of a mutual fund dealer whose principal jurisdiction is Quebec, the individual must be an approved person of the MFDA before he or she can become registered in another jurisdiction. For a representative of a mutual fund dealer or scholarship plan dealer whose principal jurisdiction is outside Quebec, that individual must be a member of the Chambre de la sécurité financière before he or she can become registered in Quebec.

Passport registration is not available to a firm seeking registration as a restricted dealer. In this case, the firm must complete the F6 and submit it, together with any supporting documentation, in each jurisdiction where it seeks registration.

**Interface Registration**

If a person seeks registration or is registered in its principal jurisdiction, the principal regulator is a passport regulator (i.e. a regulator in a jurisdiction other than Ontario), and the person seeks registration in Ontario, this is referred to as an “interface registration”. Under an interface registration, a firm is to submit an F6 to its principal regulator and the OSC. Any required supporting materials need only be submitted to the firm’s principal regulator. An individual seeking registration under an interface registration is required to submit an F4 or if applicable an F2, as required, using NRD. The applicant will generally deal only with the principal regulator.

The principal regulator will review the application to register in Ontario and will submit to the OSC an interface document containing its proposed determination. The OSC will advise the principal regulator whether it opts into, or opts out of, the principal regulator’s proposed determination. The OSC is to give the principal regulator written reasons for any decision to opt out and the principal regulator is to facilitate resolving issues between the applicant and the OSC.

Interface registration is not available to a firm seeking registration as a restricted dealer in Ontario. In this case, the firm must complete the F6 and submit it, together with any supporting documentation, in each jurisdiction where it seeks registration.

**Passport and Interface Registration**

If a person whose principal regulator is a passport regulator seeks registration in a non-principal passport jurisdiction and in Ontario, the person must follow the process for (i) a passport registration, to register in the non-principal passport jurisdiction, and (ii) an interface registration, to register in Ontario.

**Effect of Certain Actions of Principal Regulator**

Terms and conditions of registration applied by the principal regulator will also apply in other passport jurisdictions. This becomes effective October 28, 2009 for persons registered on September 28, 2009. Certain terms and conditions applied by non-principal jurisdictions prior to October 28, 2009 will be revoked effective October 28, 2009.
Any suspension, termination or surrender of registration in a principal jurisdiction will also apply in other passport jurisdictions.

**Non-Harmonized Requirements**

Generally, under the passport system for registration, a person is required to meet one set of harmonized laws, namely the requirements under 31-103. However, certain jurisdictions have maintained local requirements which must also be met. Of note are the local requirements in Quebec and British Columbia.

In Quebec, firms and individuals in the mutual fund and scholarship plan sectors are subject to a specific regulatory framework:

- mutual fund firms registered in Quebec are not required to be members of the Mutual Fund Dealers Association of Canada (MFDA) and are under the direct supervision of the Autorité des marchés financiers, as are scholarship plan firms;
- individuals in the mutual fund and scholarship plan sectors are required to be members of the Chambre de la sécurité financière;
- firms and individuals must maintain professional liability insurance; and
- firms 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.

In addition, in Quebec, an individual who is a representative of an investment dealer cannot concurrently be employed by a financial institution and carry on business as a representative in a Quebec branch of a financial institution unless he or she is a representative specialized in mutual funds or scholarship plans.

In British Columbia, investment dealers that trade in the U.S. over-the-counter markets must comply with local requirements to manage the risks of trading these securities, retain records and report quarterly to the British Columbia Securities Commission.
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.