

## CSA staff publish notice regarding transition to new registration regime

DANIELLA LAISE (dlaise@stikeman.com), KATHLEEN WARD (kward@stikeman.com)  
AND ALIX D'ANGLEJAN-CHATILLON (adanglejan@stikeman.com)



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Staff of the Canadian Securities Administrators (CSA Staff) published CSA Staff Notice 31-311 (the Staff Notice), which outlines the CSA Staff's detailed recommendations to the relevant securities regulatory authorities and ministries regarding the transition of firms and individuals from the existing registration regime to the new one under proposed National Instrument 31-103 *Registration Requirements* (NI 31-103). The recommendations apply to both Canadian and non-resident registrants, and to firms that are not currently subject to registration but will be required to register under NI 31-103. These procedural recommendations do not address any of the substantive requirements of NI 31-103. The CSA Staff will seek final approval to publish the final version of NI 31-103 on or about July 17, 2009 intending for it to come into force on or about September 28, 2009 (the effective date).

The notice discusses a number of issues, including the conversion of existing registrants to new categories of registration, timelines for transition and compliance under the new registration regime, as well as the proposed "freeze period" of the National Registration Database (NRD) to allow staff to transition registrants and activate the new forms under proposed revised National Instrument 33-109 *Registration Information* (NI 33-109). While the Staff Notice contains detailed and helpful information on key transition issues, CSA Staff caution that it reflects only what CSA Staff are recommending.

### Conversion

During the "freeze period", discussed below, the CSA propose to convert the existing categories of registration for firms and individuals to the equivalent categories under NI 31-103, where applicable, as set out in Appendix A to the Staff Notice. Generally, where there is no equivalent category of registration, the firm will no longer be registered. Of note, and as discussed further below, International Dealers currently registered in Ontario and Newfoundland and Labrador are no longer proposed to be transitioned to the Exempt Market Dealer category as proposed in the most recently published draft of NI 31-103, released in February 2008 (the 2008 Proposal).

The Investment Industry Regulatory Organization of Canada (IIROC) also plans to publish its own notice regarding the conversion of registration categories.

This newsletter was prepared by members of the Securities Group at Stikeman Elliott.

## Transition Timelines

The CSA Staff are recommending varied transition periods to allow firms and individuals to “adjust to, and comply with” the new requirements.

For **firms registered in a jurisdiction before the effective date**, the CSA Staff’s recommendations are as follows:

### **Generally**

- > 3 months for firms to designate and apply for registration for the Ultimate Designated Person (UDP) and Chief Compliance Officer (CCO);
- > 12 months for firms to satisfy capital requirements and notify the regulator of a subordination agreement;
- > 6 months for firms to satisfy bonding or insurance requirements;
- > 6 months for firms to comply with referral arrangement requirements;
- > 12 months for firms to deliver relationship disclosure information to clients; and
- > 24 months for firms to ensure that an independent dispute resolution or mediation service is available to resolve client complaints (except in Quebec where no transition period is required).

Capital and insurance in accordance with current requirements must be maintained during the transition.

If a firm fails to meet the prescribed timelines, it will be prohibited from carrying on business in the relevant jurisdictions until all the requirements of NI 31-103 are met.

Any discretionary relief relating to registration obtained by a firm before the effective date can continue to be relied on, as it relates to substantially similar provisions of NI 31-103.

### **Mutual Fund Dealer**

- > 24 months for firms to comply with the requirement to deliver client statements.

### **International Dealer**

- > Under the CSA Staff’s recommendation, a firm’s International Dealer registration in Ontario and Newfoundland and Labrador would be automatically revoked on the effective date and as of such date, the firm could continue to do business in these provinces pursuant to the “international dealer exemption” under NI 31-103. The firm would have one month to submit Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service* (Form 31-103F2).

Under the 2008 Proposal, the “international dealer exemption” would allow, subject to certain conditions being met, a non-Canadian dealer to trade with “permitted clients” when trading in “foreign securities” and certain debt instruments. The list of “permitted clients” under the 2008 Proposal is similar to the list of “designated institutions” with which Ontario-registered International Dealers are currently permitted to deal, except that:

- > the “designated institution” definition does not include any individual clients, while the “permitted client” definition is expected to include an individual who beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds C\$5 million, and to include a person or company that is entirely owned, legally and beneficially, by such an individual or individuals; and
- > a “permitted client” is expected to include a corporation that has shareholders’ equity of at least C\$100 million on a consolidated basis. (Note: This is a significant limitation as the threshold is C\$5 million under the definition of “designated institutions”).

### **International Adviser**

- > 12 months for firms currently registered as an International Adviser in Ontario or as a Portfolio Manager & Investment Counsel (Foreign) in Alberta, to submit Form 31-103F2.

During the 12-month transition period, registrants in the category of International Adviser in Ontario, and Portfolio Manager & Investment Counsel (Foreign) in Alberta would be automatically converted to the category of “Portfolio Manager” and permitted to operate under their current conditions of registration. At the end of the transition period, the firm’s registration as Portfolio Manager would be revoked. During the transition period the firm would

need to register as a Portfolio Manager under NI 31-103 or determine that it would be able to operate under the “international adviser exemption” under NI 31-103, which, as set out in the 2008 Proposal, generally permits, subject to certain conditions being met, a non-Canadian adviser to advise “permitted clients” on “foreign securities”.

### ***Individuals***

For **individuals registered before the effective date**, individuals currently registered, and in each case who will continue to be registered, as a dealing representative of a mutual fund dealer, advising representative of a portfolio manager, associate advising representative of a portfolio manager, or advising representative subject to terms and conditions of registration equivalent to the scope of authority of an associate advising representative under NI 31-103, would not be required to satisfy formal proficiency requirements.

An individual currently registered as a dealing representative of either a Scholarship Plan Dealer or a Limited Market Dealer (which is transitioning to an Exempt Market Dealer) would have 12 months to satisfy formal proficiency requirements. Similarly, the chief compliance officer designated by a Limited Market Dealer transitioning to an Exempt Market Dealer would have 12 months to meet formal proficiency requirements.

### ***Individuals and Firms not Required to be Registered before the Effective Date, but Requiring Registration after the Effective Date***

Generally, a firm or individual that is **not registered before the effective date** must meet all requirements of NI 31-103 at the time of the firm’s or individual’s application for registration is filed, as the case may be. However, there are two main exemptions to this general rule for individuals or firms who intend to register as Exempt Market Dealers or Investment Fund Managers, as set out below:

#### ***Exempt Market Dealers***

- > Other than in Ontario and Newfoundland, firms **active** in the exempt market in a jurisdiction prior to the effective date would have 12 months to apply for registration in that jurisdiction and comply with the requirements. New firms will have no transitional relief.
- > In Ontario and Newfoundland and Labrador those currently registered Limited Market Dealers will automatically be converted to Exempt Market Dealers on the effective date, and would be subject to the transition periods set out above.

#### ***Investment Fund Managers***

- > Investment fund manager firms with their head office in Canada and **active** prior to the effective date will have 12 months to apply for registration in the jurisdiction in which their head office is located and 24 months to apply for registration in other applicable Canadian jurisdictions.
- > Firms with their head office outside Canada that are either **active or inactive** prior to the effective date have 24 months to apply for registration.

The CSA plan to publish a proposal during the upcoming year explaining when an investment fund manager that (i) has a head office outside of Canada would be required to register or (ii) that has a head office in Canada that is registered in that jurisdiction in Canada would be required to register in another jurisdiction in Canada.

### **NRD Freeze Period**

The CSA Staff propose to shut down NRD for a period of two weeks between September 25, 2009 and October 12, 2009, to convert the existing categories of registration to the new categories of registration under NI 31-103 and to activate the new forms under NI 33-109. Firms would still have read-only access during that period.

Applications submitted but not approved prior to the effective date would be withdrawn from NRD, which would require such applicant to re-apply for registration using the new forms under NI 33-109 in compliance the new requirements under NI 31-103. To avoid such duplication, the CSA Staff suggest that applications be submitted well in advance and no later than (i) June 26, 2009 in respect of firm applications, (ii) July 15, 2009 in respect of individual applications for registration with adviser, and (iii) August 14, 2009 in respect of individual applications for registration with an existing firm in any category other than adviser.

Any applications that are in progress but not submitted prior to the freeze period would be deleted by the system.

Firms would be required to continue to file material information (all reinstatements, terminations for cause and changes in civil, criminal and financial information). The filings would have to be in paper format, using the new forms and would have to be re-filed using NRD no later than November 10, 2009. All other notices that otherwise would have had to be filed during the freeze period, would have to be filed using NRD no later than November 24, 2009.

The Staff Notice contains a number of additional detailed recommendations, including with respect to the conversion of individual categories of registration to a narrower "permitted individual" status, on the surrender of individual registrations that are no longer required and on certain filing procedures to avoid NRD user fees being charged unnecessarily to NRD accounts during the transition process.

For further information, please contact your Stikeman Elliott representative or any member of our Corporate Finance and Securities Group listed at [www.stikeman.com](http://www.stikeman.com)