

Because of related content, this newsletter is also being sent to those with an interest in registration reform.

## CSA issue orders exempting registrants from certain provisions of NI 31-103

On February 26, 2010, members of the Canadian Securities Administrators (CSA) each issued omnibus/blanket orders in response to applications requesting exemptions from certain provisions of National Instrument 31-103 *Registration Requirements and Exemptions* (31-103). 31-103, together with amendments to related instruments and policies, came into effect on September 28, 2009 (the Effective Date). Notice of these orders was provided under CSA Staff Notice 31-315 *Omnibus/Blanket Orders exempting registrants from certain provisions of National Instrument 31-103 Registration Requirements and Exemptions*, which was also published on February 26, 2010. The orders are summarized below.

### Continuation of transition/grandfathering provisions for registrants adding jurisdiction

Each regulator issued an order that provides a person or company adding a jurisdiction to his, her or its registration, with the benefit of certain grandfathering and transition provisions provided under Part 16 of 31-103 in that additional jurisdiction. Specifically, those grandfathering and transition provisions that deal with proficiency, capital, insurance, relationship disclosure information, referral arrangements, dispute resolution service and client statement requirements were included in the order. To rely on the order, the registrant must: (i) have been continuously registered in a jurisdiction in Canada since the Effective Date; (ii) remain registered in that jurisdiction during its reliance on the order; (iii) be exempt under the relevant section of Part 16 in that jurisdiction; and (iv) register, after the Effective Date, in the same category of registration (and in the case of an individual, with the same sponsoring firm) in an additional jurisdiction.

### Exemption from chief compliance officer proficiency requirements for portfolio manager adding a category

Under Part 3 of 31-103, an individual who satisfies the proficiency requirements for a chief compliance officer (CCO) of a portfolio manager (PM), also satisfies the proficiency requirements for a CCO of a mutual fund dealer (MFD), exempt market dealer (EMD) and investment fund manager (IFM). Each regulator issued an order providing a CCO of a PM whose proficiency is grandfathered under subsection 16.9(2) of 31-103 with an exemption from the proficiency requirements applicable to a CCO of an MFD, EMD or IFM where the firm was registered as a PM on the Effective Date and the individual was designated as the firm's CCO on the Effective Date and remains so registered.



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

## **Exemption from dealing representative proficiency requirements for portfolio manager adding mutual fund dealer or exempt market dealer category**

Under Part 3 of 31-103, an individual who satisfies the proficiency requirements for an advising representative of a PM also satisfies the proficiency requirements for a dealing representative of an MFD and EMD. Each regulator issued an order providing an advising representative of a PM whose proficiency is grandfathered under subsection 16.10(1) of 31-103 with an exemption from the proficiency requirements applicable to a dealing representative of an MFD and EMD.

## **Exemption from time limits on examination requirements for certain dealing representatives**

Pursuant to section 16.10 of 31-103, a dealing representative of a scholarship plan dealer (SPD) registered since the Effective Date and, in Ontario and Newfoundland and Labrador, a dealing representative of an EMD registered since the Effective Date, has until September 28, 2010 to meet applicable proficiency requirements under Part 3 of 31-103. Section 3.3 of 31-103 deems an individual to not have passed an examination or successfully completed a program unless such examination or program was passed or completed within a prescribed period of time *prior* to the individual applying for registration. Each regulator issued an order exempting dealing representatives of an SPD registered since the Effective Date and, in Ontario and Newfoundland and Labrador, dealing representatives of an EMD registered since the Effective Date, from the time limits under section 3.3 of 31-103.

## **Exemption from client notification requirements under section 14.5 of 31-103 for certain registrants with physical place of business in local jurisdiction**

Section 14.5 of 31-103 requires a registrant with no head office in a local jurisdiction to provide its clients with prescribed written disclosure relating to the potential difficulty for the client to obtain civil remedies against the registrant in the local jurisdiction. Each regulator issued an order that exempts a registrant with a head office in Canada and a physical place of business in the local jurisdiction from the client disclosure requirements under section 14.5.

## **Exemption from requirement to establish whether client an insider under section 13.2 of 31-103 for mutual fund dealers**

Subsection 13.2(2)(b) of 31-103 requires that a registrant take reasonable steps to establish whether a client is an insider of a reporting issuer or any other issuer whose securities are publicly traded. Each regulator issued an order exempting mutual fund dealers from this requirement.

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## **Previously issued omnibus/blanket orders**

### ***Transitional relief for previously registered international dealers in respect of Canadian debt securities***

On September 25, 2009, the Ontario Securities Commission (OSC) issued an order, effective in Ontario and Newfoundland and Labrador, providing certain transitional relief under 31-103 to dealers formerly registered as international dealers in Ontario and/or Newfoundland. The order permits dealers formerly registered as international dealers to continue to trade in Canadian debt securities outside of a distribution of the securities with designated institutions (as that term was defined prior to the Effective Date under section 204 of Ontario Regulation 1015) for a transition period of one year, expiring on September 28, 2010. The order also provides for a transition period of six months, expiring March 31, 2010 for dealers relying on the order to provide clients with prescribed written disclosure relating to clients' potential difficulty in obtaining civil remedies against the registrant in the local jurisdiction. To rely on the order, a dealer must: (i) have been formerly registered as an international dealer; (ii) have filed with the regulators a Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service*, together with an indication of its intention to rely on the order; and (iii) fulfill the conditions set out in subsection 8.18(3) (a) – (d) of 31-103.

***Transitional relief for exempt market dealers in respect of financial reporting and client statements***

On September 28, 2009, the OSC issued an order, effective in Ontario and Newfoundland and Labrador, providing certain transitional relief to former limited market dealers “mapped-over” to the EMD category. (There was an amendment to this order on February 19, 2010 to correct a drafting oversight). The order provides a transition period of one year, expiring on September 28, 2010, to former limited market dealers “mapped-over” to the EMD category from the financial reporting requirements under subsection 12.12(1) of 31-103. This transitional relief can only be relied upon if the EMD is not registered in any other category of registration in Ontario and Newfoundland and Labrador, other than a former international adviser “mapped-over” to the PM category. The order also provides a transition period of two years, expiring on September 28, 2011, to former limited market dealers “mapped-over” to the EMD category from the client statement requirements under section 14.14 of 31-103. This transitional relief can only be relied upon if the EMD is not registered in any other category of registration in Ontario and Newfoundland and Labrador, other than a “mapped-over” MFD, investment fund manager, or former international adviser “mapped-over” to the PM category.

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)

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