

Proposed Canadian registration regime for dealers, advisers, fund managers: Registration Reform round two

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On February 29, 2008, the Canadian Securities Administrators (CSA) published their revised proposals on National Instrument 31-103 relating to registration requirements for dealers, advisers and investment fund managers. Over 260 comment letters were received on the original proposals (published in February of 2007). These proposals constitute an overhaul of registration requirements and registration exempt activities, and are intended to present a streamlined and harmonized approach to the regulation of investment activities across Canada. The revised proposals are open for comments until May 29, 2008. These proposals are expansive and will have a significant impact on registration issues generally, as well as on a broad range of capital markets activities, including private placements, trading and advising activities and private and public fund offerings.

Some of the more significant amendments presented in the revised proposals include the following:

Expanded category of permitted clients

The revised proposals now include a broader category of super-accredited investors called "permitted clients". These permitted clients are a subset of the "accredited investor" category and include institutional and similar entities as well as qualified high net worth individuals (net financial assets over C\$5M), entities legally and beneficially owned by qualified individuals and qualified corporations (shareholders equity over C\$100M). The amendments would also relax "know your client" obligations and certain "fit and proper" requirements for certain registrants when dealing with permitted clients. Activities permitted to be carried on by international dealers on a registration exempt basis have also been expanded to include trading with this broader category of permitted client. Qualified international advisers would also be exempt from registration requirements when advising permitted clients with respect to non-Canadian securities.

Expanded exemptions and elimination of "look-through" analysis for fund managers

While the proposed categories of registration presented in the original proposals have not been amended, the CSA have clarified that investment fund managers would have to register only in the jurisdiction where the person or company that directs the management of the fund is located. This

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applies equally to domestic and foreign investment fund managers. As set out in the proposed Companion Policy, if an investment fund manager is located outside of Canada, the CSA have stated there would be no requirement to register in Canada unless the management of the fund is directed from within Canada. Exemptions from dealer registration have also been added for registered advisers (and those falling under the international adviser exemption) when distributing units of their own pooled funds. Prohibitions from investment advisers soliciting new business have also been removed, and additional registration exemptions have been added for certain types of government guaranteed debt and self-directed RESPs.

Registration trigger

As set out in the original proposals, the registration trigger for dealer registration is proposed to be changed generally to a business trigger. The proposed amendments include a trigger based on being in the “business of trading” in securities, as opposed to “dealing”. The Companion Policy has also been amended to reflect that acting in an intermediary or market-maker capacity will constitute trading for a business purpose.

Other amendments

Significant amendments have also been made to the “fit and proper” and to the conduct requirements. These include amendments to certain solvency requirements as well as changes to proposed rules governing conflicts of interest and information sharing, and the relaxation of requirements to deliver relationship disclosure documents to clients. Exempt market dealers are, for example, proposed to be exempt from requirements relating to maintenance of capital and insurance and delivery of financial statements if they do not hold, handle or have access to cash. As well, registrants which are members of a self-regulatory organization have been given broader relief from a range of the “fit and proper” requirements under the revised proposals.

Transition

The amendments to the original proposals now also include specific transition provisions. Existing registrants will, in most cases, be deemed to be registered in the equivalent new category (and given six months to comply with new requirements, such as relationship disclosure and complaint handling). New registrants, such as exempt market dealers and investment fund managers, will have six months to apply for registration and to comply with most of the requirements of the new rules.

Please visit our website, at www.stikeman.com, for further detailed updates on these developments in upcoming weeks.

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BACKGROUND INFORMATION

Stikeman Elliott has published four newsletters regarding the original registration reform proposals and it's affect on specific sectors. These include:

- > What it means for **limited market dealers**
- > What it means for **investment fund managers**
- > What it means for **dealers registered in Ontario**
- > What it means **for non-Canadian investment funds**

The above Securities Law Updates are available at www.stikeman.com