

ROUND TWO OF CANADA'S NATIONAL REGISTRATION REFORM PROPOSAL

Impact on “International Dealers” registered in Ontario

On February 29, 2008, the Canadian Securities Administrators (CSA) published their revised proposals on National Instrument 31-103 *Registration Requirements* (“the Instrument”), relating to registration requirements for dealers, advisers and investment fund managers. The proposed registration reforms represent a major restructuring of the Canadian dealer, adviser and investment fund manager registration rules and have implications for non-Canadian dealers, advisers and investment fund managers doing business on a registered or exempt basis in any province or territory of Canada. The Instrument is intended to create a streamlined and harmonized approach to the regulation of investment activities across Canada. Canada does not have a national or federal securities regulator; securities activities are regulated by Canada’s thirteen provincial and territorial securities regulators (the CSA is their umbrella organization).

Proposed changes to the dealer registration and exemption regime

Under the existing rules, non-Canadian dealers typically participate in the Canadian market by being registered as an “international dealer” in Ontario and relying on the “accredited investor” exemption in the other provinces and territories.

The primary effects of the Instrument on non-Canadian dealers are:

- > elimination of the “international dealer registration” category in Ontario;
- > introduction of a national “international dealer exemption” based on the Ontario “international dealer” registration category with some changes (see below) to the list of exempt “permitted clients”;
- > repeal of the dealer registration exemptions contained in National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106), including the exemption for trades with an “accredited investor”;
- > elimination of the “limited market dealer” registration category in Ontario; and
- > introduction of a new “exempt market dealer” registration category across Canada.

Current dealer registration and exemption regime

In Ontario, registration as an “international dealer” permits a non-Canadian dealer to trade with “designated institutions” in non-Canadian equity and debt securities and certain Canadian debt securities (primarily in the secondary market). The practical effect of the international dealer registration regime in Ontario is to permit a non-Canadian dealer to trade in permitted securities with institutional clients (not individuals).

“Canadian Law Firm
of the Year”

IFLR 2007
CHAMBERS GLOBAL 2006

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

Except in Ontario, provincial and territorial securities laws generally permit a non-Canadian dealer to trade in both Canadian and non-Canadian securities with an “accredited investor” on a dealer registration-exempt basis. This exemption has been very widely used by non-Canadian dealers and its proposed elimination is a significant regulatory change.

Proposed international dealer exemption will narrow list of permitted clients outside Ontario

The Ontario “international dealer registration” will be replaced by the similar Canada-wide “international dealer exemption”. Outside Ontario, this represents a very significant narrowing of permitted activities and clients in all of the other (i.e. non-Ontario) provinces and territories.

Under the Instrument, a non-Canadian dealer that is registered under the securities laws of its home jurisdiction may rely on the international dealer exemption to trade with a “permitted client” when trading in “foreign securities”. Subject to the filing of submission to jurisdiction forms in each province and territory and delivering client notifications, the practical effect of the proposed international dealer registration exemption is to narrow the list of clients with whom a non-Canadian dealer is permitted to trade on an exempt basis outside Ontario and to require registration as an “exempt market dealer” as a condition to trading with the full range of “accredited investors” in all types of securities.

Under the revised draft of the Instrument, the definition of “permitted client” has been expanded from the previous draft so that it is now very similar to the current list of “designated institutions” for Ontario-registered international dealers. The principal differences between the “designated institutions” list and the proposed “permitted client” exemption are:

- > the “designated institution” definition does not include any individual clients, while the “permitted client” definition includes 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 includes a person or company that is entirely owned, legally and beneficially, by such an individual or individuals; and
- > a corporation that has shareholders’ equity of a 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”).

Under the proposed international dealer exemption, non-Canadian dealers will be restricted to trading only in “foreign securities.” Presently, a non-Canadian dealer may trade in both Canadian and non-Canadian securities on a dealer registration-exempt basis with an “accredited investor” resident in most provinces and territories, other than Ontario. The “foreign securities” restriction is presently applicable to registered international dealers in Ontario.

Exempt Market Dealer Registration

If a non-Canadian dealer wishes to trade with “accredited investors” in Canada, the dealer will need to register as an “exempt market dealer.” An exempt market dealer registration will require a non-Canadian dealer to satisfy a number of Canadian requirements such as individual proficiency, registration of directors and officers, capital, insurance and designation of a compliance officer and senior business person. This registration is significantly more onerous than the current “international dealer” registration in Ontario.

Comment Period

The comment period on the Instrument is open until May 29, 2008.

For further information, please contact your Stikeman Elliott representative or any of the following authors from our New York office:

Kenneth G. Ottenbreit
(212) 845-7460
kottenbreit@stikeman.com

Ralph A. Hipsher
(212) 845-7469
rhipsher@stikeman.com

Terence W. Doherty
(212) 845-7475
tdoherty@stikeman.com