

## CSA propose major registration reform for dealers, advisers and investment fund managers

*Major impact on international dealers, limited market dealers and international advisers*

On February 20, 2007, the Canadian Securities Administrators (CSA) published for comment Proposed National Instrument 31-103 – *Registration Requirements* (Proposed Registration Rule). The comment period will expire on June 20, 2007.

The Proposed Registration Rule is one phase of the CSA Registration Reform Project which is targeted at harmonizing and streamlining registration requirements across all CSA jurisdictions. It represents a major restructuring of the Canadian dealer, adviser and investment fund manager registration rules, and has implications for Canadian and non-Canadian dealers, advisers and investment fund managers doing business on a registered or exempt basis in any province or territory of Canada, including foreign firms registered in Ontario as international dealers, limited market dealers and international advisers.

### Changes to the dealer registration trigger

The Proposed Registration Rule introduces a “business trigger” for registration for dealing in securities, with the result that anyone who is “in the business” of dealing in securities must register. This is a departure from the current regime which contemplates a “trade trigger” for dealing in securities. The “business trigger” is what now applies for the adviser registration requirement. The registration requirement will also extend to those who manage investment funds.

### Limited exemptions from registration

The Proposed Registration Rule provides dealer and adviser registration exemptions for international dealers and international portfolio managers. However, the list of permitted international dealer and international adviser clients is more restrictive under the Proposed Registration Rule than the current regime in Ontario. Additionally, the Proposed Registration Rule eliminates the “accredited investor” dealer registration exemption in each of the Canadian jurisdictions. As a consequence, the categories of permitted clients with whom a foreign dealer could transact on an exempt basis will be significantly restricted under the Proposed Registration Rule. With the change to the “business trigger” for the dealer registration requirement, it is

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proposed that National Instrument 45-106 – *Prospectus and Registration Exemptions* be limited to prospectus exemptions only.

### **Registration of investment fund managers**

The CSA has also proposed a new category of registration for managers of investment funds. A fund manager generally organizes an investment fund and contractually accepts responsibility for its management and administration. Currently, investment fund managers that administer a fund but do not advise or trade are not required to be registered. The registration requirement would apply to all managers of investment funds, including all public and private mutual funds and non-redeemable investment funds, labour-sponsored investment funds, scholarship plans, pooled funds and hedge funds, but not including private investment clubs. The registration requirement would apply to a firm acting as a manager of an investment fund, and to individuals at the firm in supervisory roles.

### **Registration exemptions related to foreign funds**

There are proposed registration exemptions for portfolio managers and investment fund managers that are not resident in Canada when they are advising or managing investment funds whose securities are primarily offered outside of Canada, only distributed through registered dealers in Canada and distributed on a private placement basis, subject to certain disclosure requirements.

### **Private equity and venture capital funds**

The Proposed Registration Rule does not expressly address private equity or venture capital funds, but offers some guidance in the companion policy on the application of the adviser registration requirement to general partners of limited partnerships. The CSA indicates that if the general partner's role is to select companies in which the general partner will participate in the active management and development, the CSA would not consider the general partner's activities to be portfolio management activities that require registration. Whether the business trigger for dealer registration is applicable to private equity or venture capital funds is unclear.

### **Registration categories**

It is also proposed that categories of registration for firms and individuals be harmonized across jurisdictions and streamlined. As a result, current categories in Ontario, such as international dealer, limited market dealer and international adviser, would no longer be available. The impact of these changes will be very significant for many international firms.

We will be providing further commentary and updates in the coming weeks.

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