

National Instrument 31-103

Registration Requirements and Exemptions

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Agenda

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Background

- National Instrument 31-103 *Registration Requirements and Exemptions* (NI 31-103) was implemented on September 28, 2009
- The goal of the registration reform was to streamline, harmonize and modernize all registration requirements and exemptions across all jurisdictions in Canada
- Registration reform was also intended to provide a platform for passport registration



Background

- For entire registration regime, also look at:
 - Each jurisdiction's *Securities Act* and any local rules or regulations
 - National Instrument 33-109 *Registration Information*
 - National Instrument 31-102 *National Registration Database*
 - Blanket orders
 - CSA Notices 31-313, 31-314, 31-315, 31-316
 - Multilateral Instrument 11-201 *Passport System*
 - National Policy 11-204 *Process For Registration in Multiple Jurisdictions*
 - IIROC/MFDA rules

Background

- Section 75(1) of the *Securities Act* states as follows:
 - Unless registered in accordance with Alberta securities laws, a person or company shall not act as
 - (a) a dealer,
 - (b) an adviser, or
 - (c) an investment fund manager
- Part 7 of NI 31-103 works in conjunction with the *Securities Act* by establishing the categories of registration

Overview

- Persons that are in the business of trading in securities must register with the securities regulatory authority as a dealer
- Persons that are investment fund managers must register with the securities regulatory authority as an Investment Fund Manager
- Exemptions in Part 8 of NI 31-103 or blanket orders



Business Trigger for Dealer Registration

- Factors to consider with respect to the “business trigger”:
 - engaging in activities similar to a registrant
 - intermediating trades or acting as a market maker
 - directly or indirectly carrying on the activity with repetition, regularity or continuity
 - being, or expecting to be, remunerated or compensated
 - directly or indirectly soliciting
- Discussion in section 1.3 of Companion Policy 31-103CP

Dealer Categories

- The dealer registration categories are as follows:
 - Investment dealer (IIROC member)
 - Mutual fund dealer (MFDA member)
 - Scholarship plan dealer
 - Restricted dealer
 - Exempt market dealer (EMD)



Exempt Market Dealer Registration

- EMD category replaces Limited Market Dealer (LMD) category in Ontario and Newfoundland
- EMD category is a new category of registration in all other jurisdictions
- A registered EMD is permitted to trade in and underwrite securities issued under a prospectus exemption



Exempt Market Dealer Requirements

- EMDs are subject to all registration requirements, including:
 - Proficiency
 - Capital and insurance
 - Financial reporting
 - Know your client / suitability
 - Compliance system
 - Record-keeping
 - Conflicts management
 - Complaint handling
 - Dispute resolution
 - Relationship disclosure
 - Client statements

Exempt Market Dealer Requirements

- EMDs may be exempt from the following registration requirements when dealing with a “permitted client” as defined in NI 31-103:
 - 13.2 Know your client
 - 13.3 Suitability
 - 13.13 Disclosure relating to the use of borrowed money
 - 14.2 Relationship disclosure information
 - 14.4 Relationship with a financial institution



Exempt Market Dealer Transition Periods

- Transition periods for LMDs:
 - LMDs automatically became EMDs and have various transition periods for complying with new requirements such as capital, insurance and proficiency
- Transition periods for others:
 - If active as of September 28, 2009, one year to apply
 - If not active as of September 28, 2009, must be registered



Investment Fund Manager Registration

- Registration trigger:
 - Register as an Investment Fund Manager (IFM) if acting as an IFM
 - IFM (defined in *Securities Act*): a person or company who has the power to direct and exercises the responsibility of directing the affairs of an investment fund



Investment Fund Manager Requirements

- IFMs are subject to certain registration requirements, including:
 - Proficiency
 - Capital and insurance
 - Financial reporting (includes providing a description of any net asset value adjustments)
 - Compliance system
 - Record-keeping
 - Conflicts management (unless subject to NI 81-107 *Independent Review Committee*)



Investment Fund Manager Transition Periods

- Transition periods:
 - Apply only if active as of September 28, 2009
 - If head office is in Canada: one year to apply in jurisdiction of head office and two years in other jurisdictions
 - If head office is not in Canada: two years to apply
- Additional guidance will be issued by the CSA on the following:
 - When foreign IFMs must register
 - Which jurisdictions both domestic and foreign IFMs must register



Compliance System

- A registered firm is required to have written policies and procedures establishing a system of controls and supervision to ensure compliance with securities legislation and manage business risks
- An Ultimate Designated Person is responsible for promoting a culture of compliance and overseeing the effectiveness of the firm's compliance system
- A Chief Compliance Officer is an operating officer who is responsible for the monitoring and oversight of the firm's compliance system



Record-keeping

- A registered firm must maintain records to accurately record its business activities, financial affairs and client transactions and demonstrate the extent of the firm's compliance with securities legislation
- A registered firm must keep a record that it is required to keep:
 - for 7 years from the date the record is created
 - in a safe location
 - in a manner that permits it to be provided to the securities regulatory authority in a reasonable period of time

Conflicts Management

- A registered firm must take reasonable steps to identify existing material conflicts of interest and those conflicts it would expect to arise between the firm, including each individual acting on the firm's behalf, and a client
- A registered firm's policies and procedures for managing conflicts should allow the firm to:
 - identify conflicts that should be avoided
 - determine the level of risk that a conflict raises
 - respond appropriately to conflicts



Blanket Order 31-505

- Effective on March 27, 2010
- Provides relief from the registration requirement for certain EMDs relying on the following prospectus exemptions in National Instrument 45-106 *Prospectus and Registration Exemptions* subject to certain conditions:
 - 2.3 Accredited investor
 - 2.5 Family, friends and business associates
 - 2.9 Offering memorandum
 - 2.10 Minimum investment amount

Blanket Order 31-505

- In order to rely on the blanket order, EMDs must meet the following conditions:
 - is not registered or required to be registered in any jurisdiction
 - does not provide suitability advice to the purchaser
 - has the purchaser sign a risk acknowledgement form
 - has not previously provided financial services to the purchaser
 - does not hold or have access to the purchaser's assets
 - files an information report with the Commission

Proposed Amendments

- On June 25, 2010, the CSA published proposed amendments to NI 31-103 and related instruments, policies and forms for comment
- The proposed amendments range from technical adjustments to more substantive matters
- The comment period will end on September 30, 2010

Questions?