

**ALBERTA SECURITIES COMMISSION
NOTICE**

**MULTILATERAL INSTRUMENT 33-109
REGISTRATION INFORMATION
AND COMPANION POLICY 33-109CP**

November 15, 2002

Introduction

The Alberta Securities Commission gave final approval of the following, effective February 21, 2003:

- Multilateral Instrument 33-109 *Registration Information* (MI 33-109);
- Form 33-109F1 *Notice of Termination*;
- Form 33-109F2 *Change or Surrender of Individual Categories*;
- Form 33-109F3 *Business Locations Other Than Head Office*;
- Form 33-109F4 *Registration Information for an Individual*;
- Form 33-109F5 *Change of Registration Information*; and
- Companion Policy 33-109CP.

Purpose

The purpose of the proposed instrument is to consolidate and harmonize requirements regarding the initial submission of registration information and the updating of that information.

Background

On December 14, 2001, the Canadian Securities Administrators published for comment drafts of the proposed instrument, forms and companion policy. On June 14, 2002, the CSA republished for comment amended drafts of the proposed instrument, forms and companion policy, together with a summary of the comments received during the first comment period and our responses to those comments. During the second comment period we received 5 submissions. A summary of these comments, together with our responses, is contained in Appendix "A" to this notice.

For additional background information on the proposed instrument, forms and companion policy and a detailed summary of the contents of the previously published draft materials, please refer to the notices published with those drafts.

Summary of Changes

This section describes the substantive changes made to the instrument and companion policy since the June 2002 drafts were published for comment.

Section 2.3 has been added to the instrument to clarify that an applicant for registration that is already registered under the *Commodity Futures Act* has more limited filing requirements.

Subsection 5.1(4) has been added to provide that if one registered firm has provided a notice in respect of a non-registered individual, other firms that also sponsor the non-registered individuals are not required to provide the notice.

The instrument is scheduled to come into force on February 21, 2003. The June 2002 draft proposed an effective date of November 20, 2002.

Consequential Amendments

The Commission has approved the publication of the following proposed consequential amendments for a comment period of 30 days. These amendments relate primarily to the repeal of duplicative forms and provisions and outdated form references in various provisions.

(a) Conflicting Alberta Securities Commission Rules (Rules)

MI 33-109 is being proposed for implementation as a Rule in Alberta. In connection with this implementation, the following amendments to the Rules will be required:

1. section 47(1), which mandates that certain applications for registration be in Form 3, shall be repealed;
2. section 47(2), which mandates that applications for registration as a salesman, partner or officer be in Form 4, shall be repealed ;
3. section 48, which mandates that changes to registration information be delivered using Forms 3, 4, 5, or 6 within 5 business days, shall be repealed;
4. section 50, which mandates that every application for renewal of registration as a dealer or adviser be completed in accordance with Form 5, shall be repealed;
5. section 51, which mandates that an application for renewal as a salesman be completed in accordance with Form 6, shall be repealed;
6. section 53, which mandates the filing of notices under section 63(1) or (2) of the Act, shall be repealed;
7. section 53(2), which provides that notices under section 63(1) or (2) of the Act are not required for reporting issuers, shall be repealed;
8. section 54, which provides that notices under 63(3) of the Act be in a format acceptable to the Executive Director, shall be repealed;
9. Form 3, which currently references Form 4, will be amended to refer to 33-109F4, and a notice of collection and use of personal information will be added;
10. Form 4 *Uniform Application for Registration/Approval* shall be repealed;

11. Form 5 *Application for Renewal of Registration as Dealer, Adviser or Underwriter* shall be repealed;
12. Form 6 *Application for Renewal of Registration as Salesman* shall be repealed;
and
13. Form 7 *Application for Amendment of Registration as Dealer, Adviser or Underwriter* shall be repealed.

(b) Conflicting Policies

1. ASC Policy 3.5 *Registration of Non-resident Salesmen, Partners or Officers of Registered Dealers*, which currently refers to Form 4, will be amended to refer to Form 33-109F4.
2. ASC Policy 3.6 *Requirements Respecting Security Issuer Registration and Designated Trading Officers*, which currently refers to Forms 4 and 5, will be amended to refer to Form 33-109F4.

Please send your comments on the consequential amendments to:

Kathleen Blevins
Legal Counsel
Alberta Securities Commission
(403) 297-3308
kathleen.blevins@seccom.ab.ca

Please refer your questions to any of:

Kathleen Blevins
Legal Counsel
Alberta Securities Commission
(403) 297-3308
kathleen.blevins@seccom.ab.ca

Dirk de Lint
Legal Counsel
Ontario Securities Commission
(416) 593-8090
ddelint@osc.gov.on.ca

Anthony Wong
Senior Legal Counsel, Legal and Market Initiatives
British Columbia Securities Commission
(604) 899-6777
awong@bcsc.bc.ca

The text of the instrument, forms and companion policy follows.

**Appendix “A”
Comment Table**
Multilateral Instrument 33-109 Registration Information

Commentators

Edward Jones
Royal Bank of Canada
Scotia Bank Management Group
TD Bank Financial Group
Friedberg Mercantile Group

| | Category | Comment | Response |
|----|------------------------------------|---|--|
| 1. | 33-109 Change of Information | Individuals should not have to report “non-material” changes to registration information within 5 business days of the change. Non-material changes include changes to an individual’s personal description (for example, change of weight) and such address changes where a province or municipality has changed its name. | Whether information is material depends on the circumstances. Therefore, registrants are required to notify staff of all changes to registration information within the same time frame because it is impossible to list all of the circumstances when such changes are material or immaterial. Note, however, that under subsection 4.1(2) individuals are required to any changes to their personal description within 1 year of the change rather than within 5 business days of the change. |
| 2. | 33-109 Due Diligence | How can a branch manager review a Form 33-109F4 after the form is completed by an applicant but before it is sent to an AFR? | A firm may implement a variety of in-house procedures to address this matter. One possibility is to appoint the branch manager as the AFR to whom the applicant submits the application. After the branch manager has reviewed the application, the branch manager or another AFR can then submit it through NRD. An alternative may be to restrict a firm’s AFRs from making an NRD submission until the |

| | Category | Comment | Response |
|----|--|---|--|
| | | | submission is first approved by the branch manager. |
| 3. | 33-109 Due Diligence | How can a firm make reasonable efforts to determine whether an individual understands Form 33-109F4? The regulators should provide guidance as to what would constitute “reasonable efforts” to ensure that information submitted is true and complete. | <p>It is an offence for an individual to submit an application that is inaccurate. Having firms take reasonable efforts to determine whether an individual understands Form 33-109F4 provides staff with the comfort that the individual and his or her firm have turned their minds to ensuring that the information in the application is accurate.</p> <p>In general, reasonable due diligence procedures are based on industry standards and practices that develop and change as the industry continues to evolve. CSA staff are reluctant to provide a checklist of fixed practices that will become dated as more reasonable procedures are developed as a result of this continuing evolution. For these reasons it is best that industry be permitted to continually develop the due diligence procedures necessary to fulfil their obligations. Similar circumstances exist in connection with a registrant's due diligence obligations when signing a prospectus certificate.</p> |
| 4. | Form 33-109F5 <i>Change of Registration Information</i> | If an individual is reporting a change to his or her registration information is that individual required to submit a Form 33-109F5 in paper format followed by a Form 33-109F4 in NRD format? Since the Form 33-109F4 will contain the change, why not just require the submission of the Form 33-109F4 alone? | <p>A Form 33-109F5 is required to be filed because it enables staff to easily identify the new information that is being submitted in the Form 33-109F4. Without it, staff would have to compare a previously submitted paper Form 4 with the newly filed electronic Form 33-109F4 in order to identify which information has changed. The use of the Form 33-109F5 helps streamline the review process to make it more effective and efficient.</p> |

| | Category | Comment | Response |
|----|--|--|---|
| 5. | Form 33-109F1 <i>Notice of Termination</i> | It is not necessary to ask for an individual's categories of registration on Form 33-109F1. | CSA staff have removed this question from Form 33-109F1. |
| 6. | Form 33-109F3 <i>Change of Business Location</i> | Only the NRD number of a branch should be necessary when a firm provides notice of a branch closing through NRD. | On NRD, once a location's NRD number is entered the remaining address information appears automatically so that an applicant can confirm that he or she is entering the right branch. |
| 7. | Form 33-109F4 <i>Registration Information for an Individual</i> | Phrases like "and any other information that you think is relevant" should be removed from question 1(d) of Schedule I. If an applicant could provide further information under this question that would accelerate the review of his application then the form should specifically request that information. If the form does not specifically request that information then failure to provide that information should not affect the speed of the approval process. | From experience CSA staff know that in some circumstances an applicant's answers to the questions on a schedule will prompt the regulator to ask for further information. The specifics of the request will depend on the information provided by the applicant. Under securities legislation, regulators are entitled to request such information whether or not the schedule contains the phrase that the commentator has suggested be removed (see, for example, section 82 of the <i>Securities Act</i> (Alberta)). CSA staff are of the view that the phrase does not create an obligation on applicants but merely invites them to provide further information, which might obviate the need for a regulator to request that information. |
| 8. | Form 33-109F4 Proficiency | The phrase "if applicable" should be added after the word "below" in Item 8.2. | On NRD, individuals who indicate that they are not required to provide proficiency information will navigate past Item 8.2. Individuals who are required to provide proficiency information will come to this |

| | Category | Comment | Response |
|-----|--|---|--|
| | | | item. CSA staff are of the view that it is not necessary to tell applicants that they are not required to provide a student number for an organization with which they do not have one. |
| 9. | Form 33-109F4 Location of Employment | Why does Item 9 require an applicant to submit the business address of his or her location in addition to the location's NRD number? | On NRD, once a location's NRD number is entered the remaining address information appears automatically so that an applicant can confirm that he or she is entering the right branch. |
| 10. | Form 33-109F4 Resignations and Terminations | Item 12(a) should be amended to specify that "industry standards of conduct" only refers to standards to which the individual was subject at the time of resignation or termination. | CSA staff are of the view that the current draft of the question is reasonable, and that the commentator's suggestion would only add unnecessary complexity. |
| 11. | Form 33-109F4 Criminal Disclosure | Item 14(a) should be revised to require only criminal charges be disclosed "of which the individual has knowledge". | CSA staff are of the view that a strict liability standard is preferable. Note the due diligence defence explicitly available under securities legislation (see, for example, subsection 194(3) of the <i>Securities Act</i> (Alberta)). |
| 12. | Form 33-109F4 Certification | The "Certification of Firm" should be amended to read: The applicant was provided with an opportunity to discuss the questions in this application with an officer or branch manager of this firm. The undersigned authorized officer or partner further certifies on behalf of the sponsoring firm that the applicant will be engaged by the sponsoring firm as registered or approved. | CSA staff are of the view that firms should take a more active role in the review of an individual's Form 33-109F4 than merely providing individuals with an opportunity to discuss their forms. |
| 13. | 33-109 | How will certification occur on NRD if NRD does not accept | Each form that can be filed through NRD contains two |

| | Category | Comment | Response |
|-----|--------------------------|---|---|
| | Certification | signatures? | <p>certification sections. One to be completed if the form is filed through NRD and the other to be completed if it is filed in paper. If the form is filed electronically only the AFR will make a certification. (Please refer to the forms for the language of this certification. Note that it does not require AFRs to certify that the contents of an individual’s application are true.)</p> <p>The CSA is of the view that a certification by an individual applicant is not necessary. An applicant is submitting his application to the regulator through an agent (the AFR). Whether or not an applicant submits the application through an agent and whether or not he or she certifies the application, the applicant is still subject to the offence provisions of securities legislation (see, for example, subsection 194(1) of the <i>Securities Act</i> (Alberta)).</p> <p>The CSA is of the view that the certification of an authorized officer of a firm is not necessary with an electronic submission given the sponsoring firm obligations under section 6.1 of Multilateral Instrument 33-109.</p> |
| 14. | 33-109 Certification | When a form is submitted in paper format, the filer is required to make the following certification: “I also certify that all statements of fact made in the answers to the questions are true”. This certification should be qualified by adding “to the best of my knowledge and belief after making reasonable inquiries”. | This change is not necessary given the due diligence defence explicitly available under securities legislation (see, for example, subsection 194(3) of the <i>Securities Act</i> (Alberta)). |
| 15. | 33-109 Branch/Sub-branch | “Workable” definitions of branch and sub-branch should be provided. | The hallmark of a sub-branch is that the supervisor does not normally work out of that location. The Investment Dealers Association will not permit a sub-branch to have more than four registered representatives. |

1090991.1