



Registrant Outreach Session

Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

February 4, 2015 (webinar)

February 5, 2015 (in-person session)

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Agenda

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Part 2 - Registrant information and disclosure

Part 3 - Filings of notices for proposed registrant ownership changes or asset acquisitions (sections 11.9 and 11.10)

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Part 6 - Other key amendments

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Part 1

Background and purpose of amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103)

Changes to National Registration Regime

- N1 31-103 came into force on September 28, 2009
- Lessons learned since the national regime for registrants came into force are the impetus for changes
- Amendments are intended to
 - promote stronger investor protection
 - resolve ambiguities and enhance compliance
 - create internal and external efficiencies

Timeline

Amendments	Date
Published for comment	December 5, 2013
90 day comment period ended	March 5, 2014
Final publication	October 16, 2014
Amendments came into force	January 11, 2015, subject to a few exceptions

Summary of comments

- 122 comment letters received
- Main changes we made in response to comments was on the proposed amendments to exemptions set out in Part 8 of NI 31-103



Part 2

Registrant information and disclosure

Dealer Chief Compliance Officers (CCO) must have experience (EMD/MFD/SPD)

- Applicants must have gained 12 months of relevant securities industry experience in the 36-month period before applying for registration
- Added guidance in section 3.4 of 31-103CP on the proficiency principle:
 - CCOs must have a good understanding of the **regulatory requirements** applicable to the firm and individuals acting on its behalf
 - CCOs must also have the knowledge and ability to **design and implement** an effective compliance system [emphasis added]

Dealer CCO applicants (EMD/MFD/SPD)

- Provide detailed and specific information on their relevant experience
- Focus on:
 - Compliance experience
 - Particular experience that's relevant to the category being applied for

Permitted Individuals

Definition of permitted individual in section 1.1 of National Instrument 33-109 *Registration Information* (NI 33-109) now includes:

- Trustee
- Executor
- Administrator
- Other personal or legal representative

that has direct or indirect control or direction over 10% or more of the voting securities of a firm

Business Location includes a residence (for both firms and representatives)

- New definition of "business location" in section 1.1 of NI 33-109 confirms that a business location includes a registered individual's residence if regular and ongoing activity that requires registration is carried out from the residence or if records relating to an activity that requires registration are kept at the residence
- The regulator or securities administrator may attend the residence as part of its oversight of the firm's activities
- The individual now consents in their Form 33-109F4 that the regulator can enter the residence for the administration of securities legislation and derivatives legislation

Reinstatements (Form 33-109F7)

- A registered or permitted individual can file a reinstatement when there have been no changes to their Item 13 – Regulatory Disclosure, except if there's a change to Item 13.3(c)
 - Item 13.3(c) reads, "Are you now, or have you ever been, a subject of any disciplinary actions conducted under any legislation relating to your professional activities unrelated to securities or derivatives in any province, territory, state or country?"

Registered/Permitted Individual – Unpaid debt obligation (Item 16.2 of Form 33-109F4)

- New higher threshold is an unpaid debt obligation of \$10,000 or more
- Notify regulator and sponsoring firm within 10 days of a change to all Item 16 information
- Why does firm and regulator need prompt notice?
 - Firm will take internal action to reduce risk
 - Securities regulators will propose/impose supervisory terms and conditions

Requirement of Firm - Conflicts of Interest (section 13.4 of NI 31-103)

- Firm continues to be responsible for identifying and responding to existing and potential conflicts of interest
- Companion Policy 33-109CP now incorporates CSA Staff Notice 31-326 *Outside Business Activities* published in 2011
 - “position of influence” concept is now incorporated into NI 33-109
- Additional guidance is provided in CP regarding individuals who:
 - Act as a director of or advisor to a reporting issuer
 - Have outside business activities

Registered/Permitted Individuals

– Disclose Conflicts of Interest in Item 10

- We've clarified Item 10 in Form 33-109F4 to make it clear that individuals must disclose:
 - Positions of influence
 - Whether or not any such position is business related

Reduced Late Fee Application Process

(OSC Staff Notice 13-705 *Reduced Late Fee for Certain Outside Business Activities Filings*)

- We expect many registered and permitted individuals will want to update their Item 10 disclosure
- Available for late disclosures in Item 10 submitted from October 16, 2014 to March 27, 2015
- Allows Director to reduce the late fee to \$100 for each of these late filings subject to eligibility requirements detailed in the Notice



Part 3

Filings of notices for proposed registrant ownership changes or asset acquisitions (sections 11.9 and 11.10)

Notices under sections 11.9 and 11.10

- Section 11.9 of NI 31-103 deals with a registrant acquiring a registered firm's securities or assets
- Section 11.10 of NI 31-103 deals with a registered firm whose securities are being acquired
- Both 11.9 and 11.10 previously required the registered firm to provide notice of the acquisition in each CSA jurisdiction where it is registered
- Amendments clarify and streamline the filing of these notices

Amendments to notices under sections 11.9 and 11.10

- Notices of acquisition
 - Amendments allow for the acquisition notices to be filed with the principal regulator of the registered firm
 - Notices must be filed with the principal regulator of the acquirer and the target registered firm (where the principal regulator is the same for both the acquirer and target firms, only one notice needs to be filed with the principal regulator)

Amendments to notices under sections 11.9 and 11.10

- Threshold changes
 - clarify which share acquisitions are subject to the notice requirement
 - namely, an initial acquisition of a direct or indirect ownership interest, beneficial or otherwise, in **10% or more** of the voting securities (or securities that can be converted into voting securities) of a firm registered in Canada or in any foreign jurisdiction

Amendments to notices under sections 11.9 and 11.10

- Guidance on content of notices
 - Added guidance in 31-103CP to guide acquirers or acquired firms in the preparation of the acquisition notices, with suggestions on the information that should be included



Part 4

Amendments related to exempt market dealer (EMD) activities

Amendments impacting EMDs

- Amendments to section 7.1 [*Dealer categories*] that restrict the activities that EMDs are permitted to conduct
 - prohibit EMDs from conducting brokerage activities (trading securities listed on an exchange in foreign or Canadian markets)
 - clarify that EMDs are prohibited from participating in a resale of securities traded on a domestic or foreign marketplace whether the transaction is on-exchange or off-exchange, unless the transaction requires reliance on a further exemption from the prospectus requirement
 - clarify that EMDs may only underwrite securities in limited circumstances (e.g. private placements)

Amendments impacting EMDs

- To allow for changes in business models, a six-month transition period before amendments to section 7.1(5) prohibiting exempt market dealer activity in marketplace securities has been provided. The effective date of these amendments is July 11, 2015.
- The CSA intends to examine further what activities an exempt market dealer should be permitted to conduct and may propose further amendments in the future. As a general matter, we believe the appropriate dealer registration category for participating in prospectus offerings is the investment dealer category.



Part 5

Exemptions from the requirement to register in Part 8 of NI 31-103

NI 31-103 –Part 8 Exemptions from the requirement to register: Principal Amendments

Section	Purpose of amendments
<ul style="list-style-type: none">■ 8.0.1 General condition to dealer registration requirement exemptions■ 8.22.2 General condition to adviser registration requirement exemptions■ 8.26.2 General condition to investment fund manager registration requirement exemptions	<ul style="list-style-type: none">■ New “concurrent reliance prohibition” to prevent registrants from using a Part 8 exemption to conduct activities covered by their registration category

NI 31-103 –Part 8 Exemptions from the requirement to register: Principal Amendments

Section	Purpose of amendments
<ul style="list-style-type: none">8.5 Trades through or to a registered dealer	<ul style="list-style-type: none">eliminates ambiguous term “solely”
<ul style="list-style-type: none">8.5.1 Trades through a registered dealer by registered adviser	<ul style="list-style-type: none">New exemption to confirm certain incidental trading by registered advisers does not require dealer registration
<ul style="list-style-type: none">8.18 International dealer8.26 International adviser	<ul style="list-style-type: none">removes “Canadian permitted client” condition

NI 31-103 –Part 8 Exemptions from the requirement to register: Principal Amendments

Section	Purpose of amendments
<ul style="list-style-type: none">8.20 Exchange contract – Alberta, British Columbia, New Brunswick and Saskatchewan	<ul style="list-style-type: none">changes align with changes to section 8.5not applicable in Ontario
<ul style="list-style-type: none">8.20.1 Exchange contract trades through or to a registered dealer - Alberta, British Columbia, New Brunswick and Saskatchewan	<ul style="list-style-type: none">New exemption for “exchange contract jurisdictions” to align with new exemption in section 8.5.1not applicable in Ontario

NI 31-103 –Part 8 Exemptions from the requirement to register: Principal Amendments

Section	Purpose of amendments
<ul style="list-style-type: none">8.22.1 Short-term debt	<ul style="list-style-type: none">New exemption replacing orders issued by all CSA members other than Ontario (with new condition limiting use of exemption to trades with permitted clients)Comes into force <i>July 11, 2015</i>Ontario has alternate exemptions in Section 35.1 of the Securities Act and section 4.1 of OSC Rule 45-501
<ul style="list-style-type: none">8.26.1 International sub-adviser	<ul style="list-style-type: none">New national version of Ontario’s previous standing international sub-adviser exemptionConsequential changes to OSC Rule 35-502 (repeal of previous exemption in section 7.3 and reference changes in section 7.11)

Exemptions from Registrant Conduct Obligations

Section	Purpose of amendments
<ul style="list-style-type: none">13.17 Exemption from certain requirements for registered sub-advisers	<ul style="list-style-type: none">New exemption for registered sub-advisers in respect of certain retail client-focused obligations where the sub-adviser client is a registered adviser (or a registered dealer/IIROC member acting as a portfolio manager under section 8.24)



Part 6

Other key amendments

Other key amendments

1. Incorporate into the Companion Policy some of the guidance currently contained in CSA Staff Notices and Multilateral Policies, including:
 - CSA Staff Notice 31-332 *Relevant Investment Management Experience for Advising Representatives and Associate Advising Representatives of Portfolio Managers*
 - CSA Staff Notice 31-326 *Outside Business Activities*
 - Multilateral Policy 34-202 *Registrants Acting as Corporate Directors*

Other key amendments

2. Restriction on acting for another registered firm

- intent of the dual registration prohibition set out in section 4.1 of NI 31-103 is to put the onus on firms, which often operate in multiple jurisdictions, to bring to the regulators' attention circumstances where conflicts of interest are potentially generated by dual registration
- amendment codifies our original intent that the prohibition applies in respect of firms and individuals registered in any jurisdiction of Canada

Other key amendments

3. Financial condition – Part 12 of NI 31-103

- Section 12.2 [Notifying the regulator or the securities regulatory authority of a subordination agreement]
 - Clarify that a registered firm must deliver its subordination agreement to the principal regulator before the long-term related party debt can be excluded from the firm's working capital calculation
- Section 12.12 [Delivering financial information -- dealer]
 - Clarify circumstances under which EMDs are not required to file interim financial information
- Section 12.14 [Delivering financial information – investment fund manager]
 - New Form NI 31-103F4 *Net Asset Value Adjustments* harmonizes and streamlines the information to be provided by IFMs

Other key amendments

4. Business trigger for securities issuers

- guidance added to section 1.3 of 31-103CP to clarify the application of the business trigger to start-up entities
- guidance recognizes that:
 - securities issuers may not actively carry on their activities during their start-up stage (but we would expect a *bona fide* business plan to be in place)
 - trading may be more frequent during the start-up stage, as an issuer needs to raise capital to launch and advance the business
 - if the trading is primarily for the purpose of advancing the issuer's business plan, then the frequency of the activities alone should not result in the issuer being "in the business of trading in securities"

Other amendments

- NI 33-109 and its appended forms and Companion Policy 33-109CP *Registration Information*
 - Primarily clarifying drafting changes
 - Definition of "business location"
 - Definition of "permitted individual"
- National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107) and Companion Policy 52-107CP *Acceptable Accounting Principles and Auditing Standards*
 - Clarify that investment funds that are also registered as investment fund managers must comply with NI 52-107 financial statement requirements

Other amendments

- OSC Rule 33-506 (*Commodity Futures Act*) *Registration Information*
 - Essentially mirror NI 33-109 amendments
- Housekeeping amendments to various other Instruments and Policies



Part 7

References

References

- Unofficial consolidation of NI 31-103 (January 11, 2015)
http://www.osc.gov.on.ca/documents/en/Securities-Category3/ni_20150111_31-103_unofficial-consolidated.pdf
- Unofficial consolidation of NI 33-109 (January 11, 2015)
http://www.osc.gov.on.ca/documents/en/Securities-Category3/ni_20150111_33-109_unofficial-consolidated.pdf
- Notice of Final Amendments to NI 31-103, NI 33-109, NI 52-107, OSC Rule 33-506 and OSC Rule 35-502 and related forms (October 16, 2014)
http://www.osc.gov.on.ca/documents/en/Securities-Category3/ni_20141016_final-amendments-related-forms.pdf
- CSA Staff Notice 31-326 *Outside Business Activities* (July 15, 2011)
http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20110715_31-326_outside-business.htm

References

- CSA Staff Notice 31-332 *Relevant Investment Management Experience for Advising Representatives and Associate Advising Representatives of Portfolio Managers* (January 17, 2013)
http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20130117_31-332_investment-management-experience.htm
- CSA Staff Notice 31-333 *Follow-up to Broker-Dealer Registration in the Exempt Market Dealer Category* (February 7, 2013)
http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20130207_31-333_broker-dealer-registration.htm
- OSC Staff Notice 13-705 *Reduced Late Fee For Certain Outside Business Activities Filings* (January 22, 2015)
http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20150122_13-705_reduced-late-fee.htm



Questions?



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