

**NOTICE OF PROPOSED
ONTARIO SECURITIES COMMISSION RULE 33-506
(COMMODITY FUTURES ACT),
FORMS 33-506F1, 33-506F2, 33-506F3, 33-506F4, 33-506F5
AND COMPANION POLICY 33-506CP
REGISTRATION INFORMATION REQUIREMENTS**

Substance and Purpose of Proposed Rule

The substance and purpose of the proposed Rule are to consolidate and harmonize requirements regarding the initial submission of registration information and the updating of that information.

Summary of Proposed Rule

Section 2.1 provides that a firm applying for registration shall submit a completed Form 5 *Application for Registration as a Futures Commission Merchant, Introducing Broker, or Adviser* in paper format. Although staff published for comment a proposed replacement to the current Form 5 on August 4, 2000 and July 6, 2001, staff anticipates that the current form will remain in use until a later release of the National Registration Database ("NRD") permits firms to submit all of their registration information in NRD format.

Under section 2.1, an applicant firm is also required to submit a completed Form 33-506F3 *Business Locations other than Head Office* for each of its business locations. Form 33-506F3 is new and is to be submitted in NRD format in accordance with Rule 31-509. It provides for the collection of some of the branch and sub-branch information that is currently collected in Form 5. Form 33-506F3 has been created to specify what information regarding business locations is to be submitted to NRD.

Section 2.1 also requires applicant firms to submit a completed Form 33-506F4 *Registration Information for an Individual* for each non-registered individual of the firm in accordance with Rule 31-509.

Section 2.2 provides that an individual who is applying for registration shall submit either a completed Form 33-506F4 or, pursuant to subsection (2), a completed Form 33-506F2 *Change of Individual Categories* in accordance with Rule 31-509. Form 33-506F2 is to be used for a registration application only if the applicant is applying to become registered with a firm in which the applicant is currently a non-registered individual. Submitting an application in Form 33-506F2 in this circumstance is necessary to ensure that the applicant, who will have already submitted data as a non-registered individual using Form 33-506F4, does not create a second set of data in respect of himself or herself in NRD.

Section 3.1 provides that each registered firm shall notify the regulator of a change to any information previously submitted in Form 5 within five business days of the change. A notice submitted under section 3.1 shall be made by submitting a completed Form 33-506F5 *Change of Registration Information* in paper format. Under subsection 3.1(3), a registered firm is not required to submit a Form 33-506F5 in respect of certain changes to Form 5 information if notice is otherwise provided under the Instrument.

Under section 3.3, a registered firm is required to submit a completed Form 33-506F4 in accordance with Rule 31-509 for a non-registered individual within five business days of the individual becoming a non-registered individual of the registered firm.

Section 4.1 provides that each registered individual must notify the regulator of a change to any information previously submitted in Form 33-506F4. Other than information under Item 3 - *Personal Information* or Item 8 - *Proficiency*, registered individuals shall notify the regulator of changes to their Form 33-506F4 information within five business days of the change. Registered individuals shall notify the regulator of changes to information required under Item 3 and Item 8 within one year of the change.

Section 4.2 provides that a registered individual who applies to change his or her registration category shall make the application by submitting a completed Form 33-506F2 in accordance with Rule 31-509.

Under section 4.3, a registered firm is required to notify the regulator of the termination of a registered individual by submitting a Form 33-506F1 in accordance with Rule 31-509 within five business days of the termination.

Section 5.1 provides that a registered firm must notify the regulator of a change to any information previously submitted in Form 33-506F4 for a non-registered individual. Other than information under Item 3, a registered firm shall notify the regulator of changes to a non-registered individual's Form 33-506F4 information within five business days of the change. Registered firms shall notify the regulator of changes to information required under Item 3 within one year of the change.

Subsection 5.1(3) provides that a registered firm shall notify the regulator of a change to information in Item 6 *Categories of Registered and Non-registered Individuals* of Form 33-506F4 for a non-registered individual by submitting a completed Form 33-506F2 in accordance with Rule 31-509 within 5 business days of the change.

Under section 5.2, a registered firm is required to notify the regulator if an individual ceases to be a non-registered individual of the firm by submitting a Form 33-506F1 in accordance with Rule 31-509 within five business days of the termination.

Section 6.1 of the proposed Rule requires that a sponsoring firm exercises due diligence to ensure that information submitted by the firm for a non-registered individual, or by a registered individual or an individual applying for registration, is true and complete. Section 6.1 also requires that documents used by a firm to satisfy its due diligence obligations shall be retained for a period of 7 years and shall be kept at the location of the registered firm at which the individual is working. Subsection 6.1(5) provides that a firm that retains a document under this section in respect of a submission through NRD shall record the NRD submission number on the document.

Part 8 provides that during a period several weeks before the availability of NRD, a registered firm is exempt from several notification requirements under the Rule if the registered firm submits the required notices within 15 business days of receiving access to NRD.

Section 8.5 provides that a registered individual who has not submitted a Form 33-506F4 shall notify the regulator of a change to any information previously submitted in Form 7. Section 8.5 also provides that if a registered individual provides notice of a change to Form 7 information the individual is required to submit a Form 33-506F4 in accordance with Rule 31-509.

Similarly, section 8.7 provides that a registered firm that has not submitted a Form 33-506F4 for a non-registered individual shall notify the regulator of a change to any information previously submitted in Form 7 for the individual. Section 8.7 also provides that if a registered firm provides notice of a change to Form 7 information for a non-registered individual the firm is required to submit a Form 33-506F4 for the individual in accordance with Rule 31-509.

Form 33-506F4 will replace the current Form 7. Sections 2.1 and 2.2 are intended to replace section 39 of the Regulations. Parts 3, 4, and 5 are intended to replace section 30 of the *Commodity Futures Act* (the "Act").

Related Rules

The proposed Rule is related to proposed Multilateral Instrument 33-109 Registration Information Requirements, which is also being published for comment in this bulletin.

The proposed Rule is related to proposed Multilateral Instrument 31-102 National Registration Database and proposed Rule 31-509. Staff intends that the proposed Rule, Rule 31-509, Multilateral Instrument 33-109, and Multilateral Instrument 31-102 will come into force concurrently.

Regulations to be Amended and Revoked

Form 7, section 39, subsection 43(1), subsection 43(3), subsection 43(5) will be revoked. Section 30 of the Act, concerning notices of change in registration, was repealed under the *More Tax Cuts for Jobs, Growth and Prosperity Act, 1999*. It is intended that the provision repealing section 30 will come into force on the same day as the proposed Rule.

Authority for Proposed Rule

Paragraph 65(1) 1 of the Act authorizes the Commission to make rules prescribing requirements in respect of applications for registration and the renewal of registration, amendment, expiration or surrender of registration and in respect of suspension, cancellation or reinstatement of registration.

Paragraph 65(1)7 of the Act authorizes the Commission to make rules prescribing requirements in respect of the disclosure or furnishing of information to the Commission by market participants.

Paragraph 65(1) 11 of the Act authorizes the Commission to make rules prescribing requirements in respect of the books, records and other documents required by Ontario commodity futures law to be kept by market participants, including the form in which and the period for which the books, records and other documents are to be kept.

Alternatives Considered

In the process of developing this Rule, the Commission did not consider any other alternatives.

Unpublished Materials

In proposing the Rule, the Commission has not relied on any significant unpublished study, report, decision or other written materials.

Anticipated Costs and Benefits

The proposed Rule will harmonize the notification requirements described in the proposed Rule in those jurisdictions in which the Rule and Multilateral Instrument 33-109 is adopted. NRD is expected to make the benefits of this harmonization particularly evident to firms and individuals registered in more than one jurisdiction because NRD will permit those registrants to meet their notification requirements by making a single submission through the system to multiple regulators.

Currently, under section 30 of the Act, registrants are required to notify the Director of some changes to registration information within five business days of the event. Under Forms 9 and 10 filed pursuant to section 41, however, most changes to registration information are not required to be reported by registrants until their renewal. As a result, information that is very relevant to a determination of the registrant's continued suitability for registration may not be received by the Director for up to a year after the event is known to the registrant. Staff is of the view that any cost to registrants of identifying and submitting changes to their registration information throughout the year rather than annually is minimal and is offset by the increased investor protection resulting from the Commission being able to respond expeditiously to changes in registration information.

With the submission of Form 33-506F4 through NRD, staff intends no longer to ask that photographs, evidence of proficiency, and appointments of agent for service ("supporting documents") be submitted for non-registered individuals or applicants for registration. In some circumstances (for example, if an applicant has disclosed a prior bankruptcy), staff will continue to ask that further information be submitted outside NRD. Staff expects that firms will benefit significantly from this reduction in paper filings.

Since staff will no longer receive supporting documents outside NRD in support of Forms 33-506F4 submitted through NRD, Part 6 of the Instrument imposes a positive obligation on a sponsoring firm to exercise due diligence to ensure that information submitted in respect of individuals sponsored by the firm is true and complete. The Companion Policy provides guidance as to the Commission's view of this due diligence obligation. Part 6 also provides for a record-keeping requirement in respect of documents retained in support of a submission. Staff is of the view that this due diligence and record-keeping requirement will not impose significant additional costs on sponsoring firms since currently most firms likely perform a due diligence review of sponsored individuals.

Comments

Interested parties are invited to make written submissions with respect to the proposed Rule. Submissions received by March 18, 2002 will be considered.

Submissions should be sent in duplicate to:

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario
M5H 3S8
jstevenson@osc.gov.on.ca

A diskette containing the submissions (in DOS or Windows format, preferably WordPerfect) should also be submitted. As the Act requires that a summary of written comments received during the comment period be published, confidentiality of submissions cannot be maintained.

Questions may be referred to:

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

Proposed Rule

The text of the proposed Rule follows, together with footnotes that are not part of the Rule but have been included to provide background and explanation.

DATED: December 14, 2001