

## CSA Propose Changes And Clarifications To Regulatory Framework For Dealers, Advisers And Investment Fund Managers

On December 5, the Canadian Securities Administrators ("CSA") proposed changes to the regulatory framework for dealers, advisers and investment fund managers. The changes range from technical adjustments to more substantive changes that limit the extent of activities of certain registrants.

The majority of the proposed changes would affect National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103"). Specifically, some of the key amendments include:

- *Sub-adviser exemption.* Registered advisers acting as sub-advisers to a registered adviser or dealer would be exempt from certain registrant obligations so long as certain conditions are met; such conditions include that the sub-adviser has no direct contact with the registered adviser or dealer's clients unless such registered adviser or dealer is present in person or over the telephone or other real-time communications technology.
- *International sub-adviser exemption.* This exemption would be available to international sub-advisers on the same terms as the sub-adviser exemption discussed immediately above, with the added requirements that: (i) the sub-adviser's head office or place of business is in a foreign jurisdiction; (ii) the sub-adviser is authorized in the foreign jurisdiction to carry on activities that registration in the local jurisdiction would permit; and (iii) the

sub-adviser engages in the business of an adviser in the foreign jurisdiction.

- *Short-term debt exemption.* Under this new exemption, which would replace blanket orders already in place in every jurisdiction except Ontario (where it is provided for in legislation), dealer registration requirements would not apply to trades by specified financial institutions in short-term debt having a prescribed credit rating. The exemption would be limited to trades with permitted clients.
- *Limitation of activities of exempt market dealers.* Exempt market dealers would not be permitted to conduct brokerage activities (i.e. to trade securities on an exchange in foreign or Canadian markets) or trade freely tradeable exchange-traded securities off marketplace, and would only be permitted to underwrite securities in a private placement, not in a prospectus offering.
- *Experience requirements for CCOs.* The CSA proposes to add an experience requirement for chief compliance officers of dealer firms. Chief compliance officers would be required to have 12 months of relevant securities experience in the 36 month period prior to applying for registration.

The CSA also propose to prohibit registrants from relying on exemptions for activities their category of registration permits.

In addition, the CSA propose to provide clarification or additional guidance on the following:

- *Application of the "business trigger" test to start-up issuers.* In response to concerns that a start-up issuer may be required to register as a dealer if, in its early stage of business, the issuer does not appear to qualify as an active non-securities business (e.g. issuer focuses on raising capital), the CSA propose additional guidance. Under this proposal, the start-up issuer would not be required to register as a dealer if it is raising capital to advance a bona fide business plan.
- *Trades through or to a registered dealer.* The CSA propose to clarify the exemption for trades made through a registered dealer to confirm that such exemption is not available if the person

relying on the exemption solicits or contacts any purchaser in respect of the trade.

- *Subordination agreements.* In response to the failure of some firms to comply with requirements regarding subordination agreements, the CSA intend to clarify that subordination agreements must be delivered to the regulator before subordinated long term debt can be excluded from working capital calculations. In addition, the CSA propose to clarify that only non-current related party debt can be excluded from such calculations.

Aside from NI 31-103 and its Companion Policy, the proposed amendments will also affect NI 33-109 Registration Information, NI 52-107 *Acceptable Accounting Principles and Auditing Standards*, and related policies and forms.

The CSA is seeking comments on the proposed amendments until March 5, 2014.

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For more information on this topic please contact:

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#### [a cautionary note](#)

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