

CSA WARNS ABOUT FALSE OR MISLEADING INFORMATION IN REGISTRATION APPLICATIONS

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On July 13, 2017, the Canadian Securities Administrators (the “**CSA**”) released CSA Staff Notice 33-320 The Requirement for True and Complete Applications for Registration (the “**Notice**”). The Notice focuses on the application process for individual registration in accordance with National Instrument 33-109 Registration Information (“**NI 33-109**”), and Form 33-109F4 Registration of Individuals and Review of Permitted Individuals (the “**Form**”).

According to the CSA, the purpose of the Notice is to alert stakeholders to the serious issue of submitting false or misleading applications for registration and to caution them about the potential consequences of submitting such applications, as well as to provide guidance for completing the application form.

Registration and the dangers of false or misleading information

Under the registration process, applicants disclose various information about their background that is used to assess the applicant's suitability for registration. However, according to the CSA, false or misleading information in applications has been a significant issue in past years. In some instances, this false or misleading information arises where an applicant submits information that is untrue. In others cases, it is the result of omitted, vague or mischaracterized information. This includes information provided by the applicant in correspondence or interviews with securities regulators.

In the CSA's views, if an applicant is found to have provided false or misleading information, it may impugn their integrity. Moreover, false or misleading statements made during the application process may constitute a provincial or criminal offence, resulting in financial penalties, possible imprisonment or other sanctions.

In an effort to address the issue of applicants providing false or misleading information, the Notice sets out some general principles governing disclosure obligations and liability for non-disclosure. The Notice also notes some common mistakes and guidance on how to avoid them in the interest of completing an application that meets all the requirements.

Principles of disclosure under NI 33-109

Carelessness or misunderstandings are not justifications for non-disclosure

The CSA acknowledges that most false or misleading information contained in applications is the result of carelessness or a misunderstanding of the Form. However, citing a number of cases for authority, the Notice makes it clear that carelessness or a misunderstanding of requirements do not justify providing false or misleading information.

Disclosure constitutes an ongoing obligation

Another common mistake highlighted by the CSA is the applicant's failure to recognize that disclosure is an ongoing obligation. Accordingly, even after an individual becomes registered, they are required to update their information by filing Form 33-109F5 Change of Registration Information. Failure to provide updated information may call into question an applicant's suitability for registration, and can also be a breach of securities regulations.

Better to disclose detrimental information now rather than later

The CSA makes it clear that disclosure of detrimental information does not necessarily disqualify or otherwise adversely impact an application for registration. However, failure to disclose detrimental information will likely result in the matter being investigated further, resulting in delayed review and a possible refusal of the application.

Responsibilities for disclosure extend to sponsoring firms

The CSA also reminds firms that they may be investigated for false or misleading information provided by an individual applicant that they are sponsoring. In particular, where a sponsoring firm fails to make reasonable efforts to ensure the truth and completeness of the information submitted by the sponsored applicant, it may have been complicit in the delivery of false or misleading information or otherwise facilitated a false application. As a result, securities regulators may investigate and initiate separate regulatory action against the sponsoring firm. To avoid this, the CSA recommends that firms adopt the standards set out in NI 33-109's Companion Policy, including establishing written policies and procedures to verify an individual's information prior to submitting an application for registration, documenting the firm's review of the individual's information and procedures, and reminding registered and permitted individuals about their disclosure obligations.

Guidance for completing applications

To help ensure that the above disclosure obligations are complied with, the Notice provides general guidance on how applicants should complete the Form, which includes:

- reading the application form carefully;
- completing the application form truthfully and with candour; and
- erring on the side of disclosure.

In addition to these general principles, the Notice discusses some frequent issues of non-disclosure encountered by securities authorities and best practices for avoiding them.

Item 10 – Current employment, other business activities, officer positions held and directorships

Item 10 requires applicants to list their current business and employment activities, as well as any officer and director positions held. A common mistake is for applicants who are not receiving any compensation for a particular activity to not disclose it. However, this practice is inconsistent with the instructions provided which clearly require disclosure, regardless of whether the applicant receives compensation or not.

Item 11 – Previous employment and other activities

Item 11 requires applicants to provide information regarding previous employment positions and the reasons for departure from those positions. The CSA has noted instances where an applicant who was fired or asked to resign from a job claimed that they left "to pursue other opportunities." The Notice makes it clear that this type of answer is considered misleading.

Item 12 – Resignations and terminations

Item 12 requires applicants to further elaborate on situations captured in Item 11 where the individual resigned or was dismissed for cause following specific allegations listed in the form. The Notice clarifies that the purpose of Item 12 is to capture all situations where an individual was terminated for cause by a firm at a time when the individual was the subject of allegations of misconduct, regardless of whether the alleged wrongdoing was the stated cause of termination or resignation. In interpreting what constitutes "standards of conduct", the CSA contends that it includes the policies and procedures of the firm in question.

Item 14 – Criminal disclosure

Item 14 requires applicants to disclose information pertaining to criminal charges and convictions. One of the common mistakes made by applicants is to disclose only the latter. As per the Notice, this practice is unacceptable, even if the applicant reasonably believes that only criminal convictions are required to be disclosed. Another common mistake is for applicants subject to outstanding criminal charges to omit such information because of their avowed innocence. According to the Notice, an applicant's belief in their innocence is irrelevant. With respect to convictions specifically, the Notice also warns against applicants failing to disclose convictions for crimes not generally considered "white-collar", or crimes committed recently. An

applicant is required to disclose all criminal convictions, regardless of the type of conviction or when it occurred.

The Notice goes on to recommend that in situations where an applicant is uncertain about the meaning of a legal term used in Item 14, that they consult with a lawyer for clarification.

Item 16 – Financial disclosure

Part 1 of Item 16 requires an applicant to provide information related to past or present bankruptcy proceedings. These questions apply to the applicant personally, but also to any firm for which the individual has ever been a partner, director, officer or major shareholder. A common mistake, however, is for applicants to provide information related to corporate bankruptcies only, and thereby omit any personal information. Similarly, applicants have often omitted consumer proposals even though Item 16 requires them. Finally, some applicants have also interpreted a time limit in Part 1 of Item 16 when, in reality, no time limit exists.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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