

CSA PROPOSE CHANGES TO REGISTRATION INFORMATION, OUTSIDE ACTIVITIES AND REPORTING REQUIREMENTS AS PART OF REDUCTION OF REGULATORY BURDEN INITIATIVE

Posted on February 17, 2021

Categories: [Insights](#), [Publications](#)

On February 4, 2021, the Canadian Securities Administrators (the “**CSA**”) [proposed certain amendments](#) to the registration information provided by registered advisers, dealers and investment fund managers under National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“**NI 31-103**”) with the goal of improving the overall efficiency of the registration process.

The proposed amendments are the latest in a series of efforts by the CSA to reduce the regulatory burden for registrants.^[1] If adopted, the changes will clarify and underscore certain requirements already in place. Although the amendments are not scheduled to take effect until the end of 2021, the nature of the changes provide useful guidance in navigating the sometimes ambiguous registration information requirements in relation to matters such as: (i) what constitutes an “outside activity”; (ii) when litigation status updates are required to be provided by firms; and (iii) what events in an individual registrant’s past need to be disclosed.

Defining what constitutes an “Outside Activity”

Individual registrants are currently required to disclose their business activities outside the registerable activities performed on behalf of their firm. While certain activities (such as positions with other registered firms or with the financial industry) are clearly reportable, in practice the concept of what constitutes an outside business activity has been challenging to determine and CSA staff have routinely found that registrants have either failed to disclose, or were late in disclosing, such activities.

The proposed amendments would remove the word “business” and establish six categories of “Outside Activities” to help clarify the concept for registrants. These six categories are:

- activities with another registered firm;
- activities with an entity that receives compensation from another registered firm for the regulated person’s registrable activity;
- other securities related activities;

- provision of financial or financial-related services;
- positions of influence; and
- other specified activities.

Some of these categories would be reportable whenever they are undertaken (such as securities related activities), and others only when the total amount of time spent on all outside activities (including activities involving securities, financial and financial-related services, or positions of influence) exceeds an aggregate of thirty (30) hours a month. The rationale being that spending more than thirty hours a month performing other roles may detract from the individual's ability to perform their role with their sponsoring firm.

Positions of Influence

Individual registrants and firms have also struggled with properly identifying when a person is in a "position of influence" for the purposes of Outside Activity reporting. The proposed amendments help clarify this term by adding the following definition:

"a position, other than a position with a sponsoring firm, if, due to the functions of the position or the training or specialized knowledge required for the position, an individual in that position would be considered by a reasonable person to have influence over other individuals."

The amendments provide specific examples of what constitutes a position of influence, such as clergy, doctors, nurses, caregivers, or professors.

If an individual registrant is in a position of influence, they are currently subject to restricted client terms and conditions designed to protect clients, which have traditionally been implemented on a case-by-case basis. The proposed amendments however would establish new rules to codify how these client restrictions are to be applied. The new terms and conditions would prohibit a registered individual from advising or trading for clients in relation to who they are in a position of influence. Such clients would have to be serviced by other registered individuals who are not in a position of influence.

Extending Reporting Deadlines

Regulated individuals are generally required to inform regulators of any updates to their registration information within 10 days of the date of the change. The proposed amendments extend the reporting deadline for these updates, in recognition of the fact that the current deadlines are too onerous for firms, especially larger firms that may need to monitor, review and report changes on behalf of multiple individuals at the same time.

The proposal extends the general reporting deadline from 10 days to 15 days. It also extends certain other

deadlines from 10 days to 30 days, including the deadlines for changes relating to (i) an individual's residential address, (ii) an individual's mailing address, (iii) a registered firm's securities registration, (iv) a registered firm's auditor, (v) whether and where a registered firm holds client assets, and (vi) the identification of new or additional conflicts of interest.

The CSA appears to be adopting reporting deadlines of either 15 or 30 days. One exception will be that firms must continue to report changes to an individual's status (i.e. ceasing to be a registered or permitted individual) within 10 days.

Reducing the Burden relating to Reporting Requirements

Other notable changes to NI 31-103 reporting requirements forming part of the proposed amendments include:

Reporting of Insignificant Changes in Ownership Charts No Longer Required

In order to reduce the number of filings of updated ownership charts where there is only a small percentage change in company ownership, the proposed amendments will require the reporting of changes in company ownership only when ownership exceeds or falls below certain thresholds (10%, 20% or 50%).

Ability to Delegate Filing Requirements

Regulators also routinely receive filings from multiple firms in the same corporate group when one company within that group undergoes a change. To avoid redundant updates, the proposed amendments allow firms to delegate certain notification requirements to another related registered firm, so that only one firm in a group of companies needs to disclose the change.

Updates for Insurance Policy Renewals No Longer Required

Previously, if a firm renewed an expired insurance policy they would need to inform regulators, even if no other changes had been made to the policy itself. The proposed amendments will remove this update requirement where a firm has simply renewed the same insurance policy without change. An update filing is still required however if an insurance policy lapses.

Fewer Required Updates to Litigation Status

The proposed amendments also help reduce the number of reports firms make regarding changes in the status of a litigation matter. The proposed amendments clarify that firms need only report statements of claim, statements of defense, counterclaims and any amendments to such filings. Firms must also report any decision in a legal action that could significantly affect the firm, its business or the outcome of the legal action. Documentary discovery and adjournments, by contrast, are not required to be reported.

Clarification of Common Errors in Individual Registration Forms

In an effort to reduce the frequency of incomplete or inaccurate information in individual registration forms, the proposed amendments clarify what past activities of the individual must be disclosed. These include:

- allegations of non-compliance with standards of conduct at the time of an individual's resignation or termination from any prior employment positions or contracts (whether or not those allegations were the reason for resignation or termination);
- any non-compliance with securities laws, self-regulatory organization (SRO) rules, bylaws or standards of conduct at the time of an individual's resignation or termination from any prior employment positions or contracts;
- any criminal offences under foreign law;
- bankruptcy, consumer proposals and other insolvency events, regardless of how long ago they occurred; and
- all non-securities licenses (such as medical or legal licenses).

The proposed amendments also standardize and reformat the certification requirement and place it at the beginning of the registration form in order to make individual obligations more clear.

In terms of additional information requirements, the proposed amendments include a field for each individual registrant's professional title with their sponsoring firm. The goal of this amendment is to make it easier for applicable securities regulatory authorities to evaluate what skills and credentials are necessary for individual registrants in connection with the title they hold with their firm.

Conclusion

The proposed amendments are intended to benefit registered firms, individuals and regulators. Ambiguous and/or vague requirements have resulted in registered firms or individuals being overly comprehensive in certain submissions, disclosure and updates, to make sure they stay within the rules or to not report (or be delayed in reporting) other information. Such a state of affairs creates more work and expense for registered firms and regulators, who have to sift through sometimes redundant or immaterial information.

The proposed effective date for the amendments is the end of 2021. The CSA have indicated that requirements for individuals in positions of influence will be subject to a further 6 month transition period in order to provide any impacted registered individuals time to transfer their affected clients to another registered individual.

Comment Period

Stakeholders are invited to provide written comments online [at this link](#) on or before May 5, 2021.

If you have any questions about the proposed amendments, please contact us.

[1] see our [April 2017](#), [April 2018](#) and [January 2020](#) bulletins.[ps2id id='1' target='']

by [Michael Burns](#) and [Robbie Grant](#)

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.

© McMillan LLP 2021