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Navigating Registration in Canada



By: **Tania Boulanger**
Counsel, Capital Markets
& Securities, McMillan LLP



By: **Kiira Kääril**
Associate, Capital Markets
& Securities, McMillan LLP

The Canadian marketplace offers securities industry participants a great opportunity for expansion or relocation. Canada's capital markets are some of the largest and most sophisticated in the world, with a diverse investor base and established regulatory framework. This article provides an overview of registration in Canada, as well as tips and tricks for navigating this process and avoiding delays.

Canadian Regulatory Landscape

Securities laws in Canada are not federally regulated. Each province and territory has a separate regulatory body responsible for administering the securities statute and regulating the securities industry in its jurisdiction. However, the Canadian Securities Administrators, an umbrella organization of Canada's provincial and territorial securities regulators, coordinates and harmonizes securities regulation across the country, including the registration requirements applicable to firms and the individuals acting on their behalf.

Firm Registration

Generally, unless an exemption is available, firms are required to register with the regulatory authority in each province and/or territory where they wish to carry out registerable activities. Specifically, registration is required if a firm is:

1. in the business of, or holding itself out as being in the business

of, trading securities (a **Dealer**);

2. in the business of, or holding itself out as being in the business of, advising in respect of the buying and selling of securities (an **Adviser**);
3. acting as an underwriter; or
4. acting as an investment fund manager (an **IFM**).

Exemptions

There are several exemptions from the registration requirements. For example, the international dealer and international adviser exemptions allow certain foreign Dealers and Advisers to provide limited services without having to register in Canada, as long as the prescribed conditions are satisfied.

Under the international dealer exemption, conditions include that the foreign Dealer must be trading as a principal or agent only for the issuer of the securities, a "permitted client" (as defined in the regulations), or a non-Canadian resident. Activities are limited, for example, to those necessary to facilitate a distribution of securities primarily offered in a foreign jurisdiction or any trades with an investment dealer that is purchasing as principal.

Where the international adviser exemption is relied upon, foreign Advisers may advise permitted clients in relation to investments in foreign securities and in select instances, on Canadian securities, but only where

the advice regarding Canadian securities is incidental to the advice on foreign securities. Furthermore, no more than 10% of the aggregate consolidated gross revenue of the foreign Adviser, its affiliates, and its affiliate partnerships can be derived from their activities in Canada.

Firm Registration Process

Where an exemption is not available, a firm will need to apply for registration with the applicable regulator(s). To ensure an expedient registration process, firms must be adequately prepared and supported. The following paragraphs summarize the primary steps and considerations in this process, with tips to avoid unnecessary delays.

Required Documentation

Registration requires the preparation of extensive documentation. In addition to the application form, registrants must submit a three year Business Plan (**BP**) and Policies and Procedures Manual (**PPM**). The BP must clearly describe the firm's business model. Before registering, it is important to think ahead through the firm's operations and finalize the BP, as changing directions later on can complicate and extend the registration process. The PPM must demonstrate the firm's ability to comply with the regulatory requirements applicable to its activities. Given the range of specified content, the PPM can be a lengthy document which takes a considerable amount of time to prepare. While some regulators require only the PPM's table of contents to be included in the application, others review the PPM in its entirety. Other required documents can include constating documents, extra-provincial registration (where applicable), organizational charts and audited financial statements or a statement of financial position (for newly established firms).

The registration application and all supporting documents should be submitted to the regulator as a single package. Incomplete or deficient applications will delay the approval process and some regulators may even return such applications. Further, it is critical that all information be true and accurate in all respects, as any false or misleading information in the application

will undermine the applicant's credibility and fitness for registration, hinder the process, and constitutes an offence under securities legislation. Accuracy and thoroughness in preparing the application are essential to circumvent these concerns, streamline the process and avoid unnecessary costs and/or consequences.

Service Providers & Other Entities

A law firm and/or compliance consultant can assist with the preparation of the documents mentioned above. While this process is underway, the firm should simultaneously retain an auditor, an insurer and make the necessary arrangements to ensure that the firm is adequately capitalized and comfortably meets the applicable minimum working capital requirements. An auditor will be required to provide the audited financials. The insurer can provide the firm with appropriate bonding or insurance coverage, as required by the regulations. Generally, the minimum capital requirements are \$25,000 for Advisers, \$50,000 for Dealers, and \$100,000 for IFMs (in each case not including the deductible on the firm's financial insurance bond). The minimum working capital requirements are not cumulative, however.

Other entities to be aware of when seeking registration in Canada include the Canadian Investment Regulatory Organization (**CIRO**) and Ombudsman for Banking Services and Investments (**OBSI**). CIRO is a recognized Self Regulatory Organization (**SRO**), and firms seeking registration as an investment dealer and/or mutual fund dealer (two of the Dealer sub-categories) are required to become member firms of CIRO. OBSI is a national organization that helps resolve disputes between registered firms and their clients. Outside of Québec, all registered Dealers and Advisers, except for SRO members, are required to take reasonable steps to ensure that OBSI is accessible to clients with eligible complaints.

Individual Registration

Subject to limited exemptions, individuals who trade, underwrite or advise on behalf of a registered Dealer or Adviser, or act as the ultimate designated person (**UDP**) or chief compliance officer (**CCO**) of a registered firm



must also be registered. Aside from the UDP and CCO, individuals acting on behalf of a registered IFM do not need to be registered.

In order for individuals to register, they must generally be sponsored by a firm that is registered or seeking registration. After filing the firm application with the appropriate regulator(s), the firm must complete and file a form for each individual that will be acting on its behalf.

It is critical to ensure early on that the individuals who will be acting on behalf of the firm satisfy the proficiency and integrity requirements, including the applicable education, training and experience requirements prescribed by securities legislation or the relevant SRO. The proficiency requirements are generally exam-based rather than course-based.

Timelines

Once a firm submits its registration application and supporting materials, the regulator will review the application and may reach out with questions, requests for further documentation, and/or conduct a pre-registration meeting with the principals of the firm. It is important to respond to the regulator in a timely manner and anticipate areas of concern, based on the previous operations and history of the firm or its principals. Experienced legal counsel can help identify such areas of focus.

Overall timelines will vary based on the applicant's registration jurisdiction(s) and categories, as well as the complexity of the application. This process generally takes between three to nine months to obtain registration. Timelines can be extended when dealing with novel industries such as cryptocurrencies for example, or if any issues are encountered during the course of the registration process.

Following registration, it is crucial that firms operate in accordance with the BP and PPM, and comply with applicable securities law requirements. The regulator will continue to monitor the firm's operations and conduct compliance reviews on a regular basis.

Canadian capital markets are robust and full of opportunities for financial services providers. The strength of these markets is underpinned by the well-regulated financial system and nation-wide commitment to transparency and investor protection. However, due to the complexities of Canadian securities laws, it is imperative that firms obtain legal advice before conducting any activities in relation to Canada.

The foregoing provides only a general overview, does not constitute legal advice and is provided for informational purposes only. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.