Registration Requirements: Overview

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This Note addresses dealer and adviser registration requirements in Canada. In particular, it describes the requirements to register, the registration categories and the reporting and other requirements to maintain a registration, including an overview of the National Registration Database. This Note also describes the interaction of regulation of registrants by provincial securities regulators, Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association (MFDA).

What Is Registration?

If an entity or individual conducts certain specified activities, they must be registered with the securities regulatory authorities in the provinces or territories in which such activities are conducted. Registration is the process of being approved by securities regulatory authorities to conduct such specified activities, following which, the entity or individual may do so in compliance with detailed rules and active supervision by the regulators.

This note provides an overview of registration requirements, including a description of:

- Who regulates registrants.
- What activities require registration.
- Categories of registration.
- What is considered by regulators before granting registration and ongoing obligations.
- Exemptions from the registration requirements.

Who Regulates Registrants

Regulation of securities activities in Canada is a matter of provincial jurisdiction. The collective of provincial securities commissions is also known as the Canadian Securities Administrators (CSA). On November 9, 2018, the Supreme Court of Canada ruled that a proposed national cooperative capital markets regulatory system is constitutional, although it is not expected to be put in place. Each of the ten provinces and three territories of Canada have a separate, but largely similar, legislative scheme which regulates the rules and procedures for registration matters in its province. However, as noted herein in relation to non-resident investment fund managers, there continues to be some variation among these requirements.

Securities regulators rely on self-regulatory organizations such as the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA) to carry out certain regulatory responsibilities. Each of IIROC and the MFDA are subject to oversight and regular operational reviews by CSA

members. Each of IIROC and the MFDA obtained or are seeking to obtain recognition orders from the various provincial securities regulators, authorizing it to be a self-regulatory organization, authorized to perform certain regulatory functions including establishing its own rules, and administering and monitoring compliance with its rules and securities legislation by persons subject to its jurisdiction.

IIROC

IIROC carries out its regulatory responsibilities through setting and enforcing rules regarding the proficiency, business and financial conduct of dealer firms and their registered employees and through setting and enforcing market integrity rules regarding trading activity on Canadian equity marketplaces.

IIROC regulates all investment dealer firms in Canada. Provincial securities legislation requires investment dealers to apply and be accepted for membership with IIROC if they wish to operate in Canada.

IIROC's activities include conducting financial, business conduct, and trading conduct compliance reviews of dealer firms and investigating possible dealer or marketplace misconduct by its dealer firms or other market participants.

IIROC has its own "Dealer-Member Rules" (DMRs), which supplement and enhance the minimum standards prescribed under National Instrument 31-103 - Registration Requirements, Exemptions (NI 31-103) and related provincial securities laws. IIROC typically establishes higher and more detailed standards for its investment dealers. On August 22, 2019, IIROC published IIROC Notice 19-0114 – Rules Notice – Notice of Approval/Implementation – Implementation of IIROC Dealer Member Plain Language Rule Book to provide notice that the CSA had approved IIROC's Dealer Member Plain Language Rule Book (PLR Rule Book) and that, on June 1, 2020, IIROC would repeal the existing DMRs and implement the PLR Rule Book. On April 16, 2020, IIROC announced that in view of the COVID-19 pandemic and to reduce burden on the dealers it regulates, implementation of the PLR Rule Book will be delayed until December 31, 2021. Until December 31, 2021, the existing DMRs will continue to apply and upon implementation, IIROC will refer to the PLR Rule Book as the "IIROC Rules".

Although IIROC is a national organization, registration is still on a provincial and territorial basis. IIROC is organized in Districts by province, so a head office in Ontario would belong to the Ontario District of IIROC. If a dealer wishes to trade in provinces outside Ontario, it has to register with the securities regulator in each Canadian province and territory in which the firm has customers. An Ontario-based investment dealer would deal primarily with the Ontario District of IIROC for virtually all registration regulation matters.

MFDA

The MFDA is the national self-regulatory organization (SRO) for the distribution side of the Canadian mutual fund industry. Its members are mutual fund dealers that are licensed with provincial securities commissions.

As an SRO, the MFDA is responsible for regulating the operations, standards of practice and business conduct of its members and their representatives with a view to enhancing investor protection and strengthening public confidence in the Canadian mutual fund industry. Provincial securities legislation requires mutual fund dealers to apply and be accepted for membership with the MFDA if they wish to operate in Canada.

Similar to IIROC, the MFDA has its own member rules, which supplement and enhance the minimum standards prescribed under NI 31-103 and related provincial securities laws. Although the MFDA is a national organization,

similar to IIROC, registration is still on a provincial and territorial basis. The MFDA is separated into four regional councils: Atlantic, Central, Prairie and Pacific.

National Registration Database

The National Registration Database (NRD) and electronic submissions thereunder are governed by National Instrument 31-102 - National Registration Database (NI 31-102). The purpose of NI 31-102 is to establish requirements for the electronic submission of registration information through NRD.

NRD is a web-based system that permits dealers and advisers to file registration forms electronically. It has been designed, in consultation with industry representatives, to harmonize and improve the registration process across most of the jurisdictions of Canada. Payment of all fees including submission fees, annual registration fees, user fees and late filing fees is made through NRD as well.

What Specified Activities Require Registration

Firms and individuals must register if they are:

- In the business of trading in securities, where trading is defined to include a broad range of activities, the most common being any sale or disposition of a security for valuable consideration, any receipt of an order to buy or sell a security, and any act, advertisement, solicitation conduct or negotiation directly or indirectly in furtherance of any of such activities.
- In the business of advising in securities, where advising means the giving of advice on buying or selling securities.
- Acting as an underwriter (a person who, as principal, agrees to purchase securities with a view to distribution) or as agent (a person who offers securities for sale in connection with a distribution).
- Acting as an investment fund manager: a person or company that directs the business, operations or affairs of an investment fund.

(Section 1.3, Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations (31-103CP).)

Canadian courts have concluded that provincial securities legislation is not limited to protecting the interests of domestic investors, but can also be applied to regulate persons within the province in order to protect investors outside the province. Accordingly, the CSA has taken the view that dealers or advisers (including foreign dealers or advisers) with offices or employees operating in a Canadian jurisdiction who trade or advise in securities in such Canadian jurisdictions, may be required to be registered under Canadian securities law, even if the clients are not resident in Canada. An exemption from registration for such activities by a US broker-dealer or US adviser to a US resident client is available in certain circumstances as described below under Exemptions from Registration Requirements (see CSA Staff Notice 32-301).

The CSA are in the process of developing a proposed registration regime for derivatives dealers, derivative advisers and other derivatives market participants pursuant to Proposed National Instrument 93-102 Derivatives: Registration and Proposed National Instrument 93-101 Derivatives: Business Conduct. Under the current proposals, the requirement to register as a derivatives adviser or a derivatives dealer will be based on business triggers as

it relates to over-the-counter derivatives similar to the current business triggers for registration under Canadian securities legislation described below (see Business Trigger for Registration: Trading or Advising). The rule-making process is moving forward and it may reasonably be assumed that this regime will be in force in 2021.

Business Trigger for Registration: Trading or Advising

The terms "trading" and "advising" are broad. As a result, the determining factor as to whether a trading or advising activity requires registration is whether the entity or individual is trading or advising for a business purpose, otherwise known as the "business trigger" for registration.

Only those entities or individuals "in the business" of trading or advising are required to register with securities regulators to carry out such activities. There is no bright line test to determine if an entity or individual is trading or advising for a business purpose. It is a factual determination based on a number of considerations. Securities regulators have noted that the following factors may suggest that a person is "in the business" of trading or advising, as applicable:

- Engaging in activities similar to a registered dealer or adviser.
- Acting as intermediary or market maker.
- Activity is repetitious, regular or continuous.
- Activity is done with compensation or remuneration in mind.
- Contacting someone to solicit trades or to offer advice.

No one factor on its own is determinative as to whether an individual or firm is in the business of trading or advising in securities, but rather the facts must be considered together (section 1.3, 31-103CP). The following chart illustrates how to apply these triggers for trading by a securities issuer:

No registration required	**Registration likely required**
No active securities business	Frequently trades in securities
Does not hold itself out as being in the business of trading	Employs or contracts individuals to perform activities similar to a registrant
Trades infrequently	Actively solicit investors
No expectation of compensation	Acts as intermediary
No profit from trading in securities	Trades in securities with remuneration in mind Example: investment funds

Note that although the registration requirement is triggered, there are a number of exemptions from the requirement to register as described below.

Acting as an Underwriter

A person who acts as an underwriter must also be registered. An underwriter is generally a person that will assist an issuer that wishes to distribute securities to raise funds. Such person will assist with setting the price, marketing and other activities. An underwriter will have a distribution network of dealers, and will buy the securities from the issuer and sell them to investors through such distribution network.

For more information on underwriters and their role, see Practice Notes, Prospectus Offerings in Canada: Overview and Underwriting Prospectus Offerings in Canada: Overview.

Acting as an Investment Fund Manager

To determine whether registration as an investment fund manager is required, the following should be considered.

Is the Fund an "Investment Fund"?

An investment fund is either a mutual fund (a fund whose securities are redeemable at net asset value) or a non-redeemable investment fund. A non-redeemable investment fund means an issuer that meets all of the following:

- Primary purpose is to invest money provided by its security holders.
- Does not invest:
    - for the purpose of exercising or seeking to exercise control of an issuer, other than an issuer that is a mutual fund or a non-redeemable investment fund; or
    - for the purpose of being actively involved in the management of any issuer in which it invests, other than an issuer that is a mutual fund or a non-redeemable investment fund.
- Not a mutual fund.

  (Section 1(1), Securities Act, R.S.O. 1990, c. S.5 (OSA) and OSC Rule 14-501, "non-redeemable investment fund".)

Generally, if the fund has no purpose but investing and does not control any other operating subsidiary, it is likely to be considered an investment fund. Typical private equity funds or venture capital funds that have management rights in the portfolio companies in which it invests are not likely to be considered an investment fund.

A person acting as the manager of a fund that is not an investment fund would not be required to register as an investment fund manager.

If an Investment Fund, Who is the "Manager" of the Investment Fund?

An investment fund manager is a person or company that directs the business, operations or affairs of an investment fund. The following functions and activities are indicative of a person who is acting as an investment fund manager:

- Establishing a distribution channel for the fund (that is, hiring distributors).
- Marketing the fund.

- Establishing and overseeing the fund's compliance and risk management programs.
- Overseeing the day-to-day administration of the fund.
- Retaining and liaising with the portfolio manager, the custodian, the dealers and other service providers of the fund.
- Overseeing advisers' compliance with investment objectives and overall performance of the fund.
- Preparing the fund's prospectus or other offering documents.

In Which Jurisdictions Is Registration as Investment Fund Manager Required?
There are two different regulatory models that must be considered when determining whether registration is required as an investment fund manager in a particular jurisdiction:

Requirement to register with securities regulators in Ontario, Quebec, and Newfoundland and Labrador. The requirement to register as an investment fund manager in such jurisdictions is more stringent and burdensome than in the other jurisdictions across Canada. If the investment fund has a security holder in any of these three provinces, then the fund's manager is required to be registered as an investment fund manager in each applicable jurisdiction unless an exemption from registration is available. The exemptions from registration are either:

- If the fund does not actively solicit investors in such jurisdictions (known as the "no active solicitation" exemption).
- If all of the security holders of the fund fit within the definition of "permitted client" (known as the "permitted client" exemption).

(Sections 2 and 3, Multilateral Instrument 32-102 - Registration Exemptions for Non-Resident Investment Fund Managers (MI 32-102).)

Requirement to register with securities regulators in the other jurisdictions (British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Prince Edward Island, Nova Scotia, Yukon, Northwest Territories and Nunavut). The requirement to register as an investment fund manager in such jurisdictions would only be required if the investment fund manager has a head office, manages or carries on material activities from a physical place of business in the jurisdiction. Functions or activities tied to the "mere" presence of security holders, solicitation of investors or the distribution of securities in a jurisdiction does not give rise to investment fund manager registration in such jurisdictions. Such activities or functions must be directed from within the applicable jurisdiction before registration as an investment fund manager is required (Multilateral Policy 31-202 - Registration Requirement for Investment Fund Managers (MP 31-202)).

To the extent an investment fund has investors or wishes to solicit investors across all of Canada, the fund's investment fund manager would need to consider the applicable regulatory model for each jurisdiction in Canada to determine if registration as an investment fund manager is required.

Categories of Registration

There are different categories of registration under which a person can apply to be registered. The category of registration obtained will determine the type of activity the firm is permitted to carry out. Individuals must register if they trade, underwrite or advise on behalf of a registered dealer or adviser.

Dealer Categories

Investment dealer. An investment dealer:

- Is permitted to trade in debt and equity securities with any type of client in respect of any security and can act as an underwriter.
- Must be a member of IIROC.
- Is subject to IIROC's "dealer-member" rules which supplement and enhance the minimum standards for investment dealers prescribed under securities legislation.

(Sections 7.1(2)(a) and 9.1, NI 31-103.)

Exempt market dealer. An exempt market dealer:

- Is permitted to act as a dealer in the "exempt market". (For example, they may act as a dealer by trading a security, including securities of reporting issuers, distributed under an exemption from prospectus requirements such as a private placement or secondary market sale to accredited investors.)
- May act as underwriter in respect of a distribution of securities that is made under an exemption from the prospectus requirement.
- May act or solicit in furtherance of receiving an order to buy or sell a security in the exempt market.

(Section 7.1(2)(d), NI 31-103.)

For more information on the exempt market and private placements in Canada, see Practice Note, Private Placement Offerings in Canada: Overview and Private Placements in Canada Toolkit.

Mutual fund dealer. A mutual fund dealer:

- Is permitted to trade in the category of mutual fund securities.
- Must be a member of the MFDA.
- Is subject to the MFDA's "dealer-member" rules which supplement and enhance the minimum standards for mutual fund dealers prescribed under securities legislation.

(Sections 7.1(2)(b) and 9.2, NI 31-103.)

Scholarship plan dealer. A scholarship plan dealer is permitted to trade in securities of scholarship plans (section 7.1(2)(c), NI 31-103).

Restricted dealer. A restricted dealer is permitted to trade in securities but limited by conditions on its registration. It is intended to accommodate dealers that do not fit under any other dealer category. The restrictions are set by the securities regulatory authorities at time of registration and can include such things as restrictions on type of clients or restrictions on type of securities (section 7.1(2)(e), NI 31-103).

Adviser Categories

Portfolio manager. A portfolio manager is permitted to advise in Canadian debt and equity securities with any type of client (section 7.2(2)(a), NI 31-103).

Restricted portfolio manager. A restricted portfolio manager is permitted to advise but limited by conditions on its registration to advising in specified securities, classes of securities or the securities of a class of issuers (section 7.2(2)(b), NI 31-103).

Investment Fund Manager Category

Investment fund manager. An investment fund manager is permitted to direct the business, operations or affairs of an investment fund. Activities include marketing the fund, day-to-day administration, compliance and risk management, retaining a portfolio manager, retaining a custodian, retaining the dealers, preparing a fund prospectus and security holder reports (section 7.3, NI 31-103).

Registration Criteria and Ongoing Obligations

An individual or firm that wants to register must file an application form with each securities regulatory authority in the applicable Canadian jurisdictions in which it intends to carry out such activities as required by National Instrument 33-109 — Registration Information (NI 33-109). Registration is not granted automatically, but rather securities regulators have a "discretionary" right to register or not register a firm or individual. In exercising their discretion, securities regulators will assess whether a firm or individual is or remains fit for registration. Applicants will provide information to the securities regulators to assist with the determination as to whether a firm or individual is fit for registration (sections 2.1 and 2.2, NI 33-109).

Securities regulators will generally consider three fundamental criteria:

- **Proficiency.** Individual applicants must meet applicable education, training and experience requirements and demonstrate knowledge of securities legislation and the products they recommend (Part 3, NI 31-103).
- **Integrity.** Registered individuals must conduct themselves with integrity and have an honest character (Part 3, NI 31-103).
- **Solvency.** An applicant’s overall financial condition is assessed including individuals' history of bankruptcy. Firms are subject to conditions including minimum capital requirements and insurance requirements (Part 12, NI 31-103).

Once registration is granted to a person or individuals, such registrants are subject to a number of ongoing requirements. Some of the requirements are routine while other requirements are event driven.

Examples of routine requirements include:

- The obligation to file interim and annual financial statements (Part 12, Division 4, NI 31-103).
- Annual renewal fee filings (Ontario Securities Commission Rule 13-502 Fees (OSC Rule 13-502) and section 4.2, NI 31-102).
- Monthly reporting relating to anti-money laundering legislation (sections 5, 6, 6.1, 7 and 7.1, Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17; sections 7 and 8, Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism, SOR/2001-360).
- Working capital reporting (section 12.1, NI 31-103).
- The obligation to issue client account statements (section 14.14, NI 31-103).

Examples of event driven obligations include:

- The obligation to issue trade confirmations (section 14.12, NI 31-103).
- The obligation to notify regulators of any proposed acquisitions or dispositions of securities of a registrant (sections 11.9 and 11.10, NI 31-103).
- Amendments to registration application information (Parts 3 and 4, NI 33-109).

Dealing with Clients

On October 3, 2019, the CSA published notice of amendments to NI 31-103 and 31-103CP aimed at enhancing the client-registrant relationship (Client Focused Reforms). The Client Focused Reforms were finalized on December 12, 2019 and came into force on December 31, 2019, but will be phased in over a two-year period, as described below. The scope of the Client Focused Reforms include the introduction of a know your product (KYP) provision (section 13.2.1, NI 31-103) and enhancements to the existing know your client (KYC), suitability, conflict of interest and relationship disclosure information requirements (Part 13, Divisions 1 and 2, NI 31-103). Below is a brief overview of the Client Focused Reforms.

Enhanced KYC Requirements

The enumerated categories of KYC information that registrants are required to gather have been expanded to include information regarding each client's (a) personal circumstances, (b) investment knowledge, (c) risk profile and (d) investment time horizon (section 13.2(2)(c), NI 31-103). Registrants are also required to take reasonable steps, within a reasonable time after receiving the information, to have clients confirm the accuracy of collected information (section 13.2(3.1), NI 31-103) and are required to update and review KYC information in certain circumstances and at regular intervals:

- For managed accounts, no less frequently than once every 12 months.
- If the registrant is an exempt market dealer, within 12 months before making a trade for, or recommending a trade to, a client.
- In any other case, no less frequently than once every 36 months.

(Section 13.2(4.1), NI 31-103).

KYP Requirements

The KYP requirements introduced by the Client Focused Reforms, along with the revisions to the KYC provisions, are intended to support the enhanced suitability determination. Both registered firms and registered individuals have KYP obligations.

- Registered firms must take reasonable steps to assess, approve and monitor securities made available to clients. Assessments must consider relevant aspects of the securities (e.g., structural features, risks, initial and ongoing costs) and securities must be approved before being made available to clients, then monitored for significant changes (section 13.2.1(1), NI 31-103).
- Registered individuals have similar obligations and must take reasonable steps to understand securities that they purchase or sell for, or recommend to, clients. The steps required to understand the security are those that are reasonable to enable the registered individual to make a suitability determination (section 13.2.1(2)-(3), NI 31-103).

Enhanced Suitability Determination

A suitability determination is required before opening an account for a client or taking any investment action for a client. This suitability determination requires the registrant to determine, on a reasonable basis, that the action satisfies the following criteria:

- The action is suitable for the client, based on the following factors:
    - the client's information collected in accordance with section 13.2 [know your client];
    - the registrant's assessment or understanding of the security consistent with section 13.2.1 [know your product];
    - the impact of the action on the client's account, including the concentration of securities within the account and the liquidity of those securities;
    - the potential and actual impact of costs on the client's return on investment; and
    - a reasonable range of alternative actions available to the registrant through the registered firm, at the time the determination is made.
- The action puts the client's interest first.

  (Section 13.3(1), NI 31-103).

A registrant must conduct a suitability review of their client's account and the securities in the account and take reasonable steps, within a reasonable time, after any of the following events:

- If a registered individual is designated as responsible for the client's account.

- If the registrant becomes aware of a change in a security in the client's account that could result in the security or account not satisfying the suitability requirement.
- If the registrant becomes aware of a change in the client's information collected that could result in a security or the client's account not satisfying the suitability requirement.
- If the registrant reviews the client's information under its obligation to periodically update KYC information. Registrants have a reasonable amount of time to conduct any such suitability review and to take reasonable steps.

  (Section 13.3(2), NI 31-103).

The suitability provisions also include a new rule replacing the current provision for client-directed trades. The rule provides an exemption if the registrant receives an instruction from a client to take an action that does not satisfy suitability requirements as long as the registrant has done all of the following:

- Informed the client of the basis for the determination that the action will not satisfy the suitability requirement.
- Recommended to the client an alternative action that satisfies the suitability requirement.
- Received recorded confirmation of the client's instruction to proceed with the action despite the determination that the action will not satisfy the suitability requirement.

  (Section 13.3(2.1), NI 31-103).

Waivers

There are certain exemptions from certain KYC requirements and the suitability requirements provided for under section 13.3.1 of NI 31-103 for permitted clients. The exemptions apply to permitted clients who request in writing that the registrant not make suitability determinations for the client's account (section 13.3.1(1)-(2)). If the client is an individual, the client's account must not be a managed account to fall within the relevant exemption (section 13.3.1(2)(c)).

Conflicts of Interest

The Client Focused Reforms' amendments to the existing conflicts of interest rules introduce a requirement that conflicts must be addressed in the best interest of the client (sections 13.4(2) and 13.4.1(3), NI 31-103).

Registered firms are required to take reasonable steps to identify existing material conflicts of interest, and material conflicts of interest that are reasonably foreseeable, between the client and the firm or any individual acting on the firm's behalf (section 13.4(1), NI 31-103).

Registered firms must disclose in writing material conflicts to a client whose interests are affected by the conflict if a reasonable client would expect to be informed of those conflicts (section 13.4(4), NI 31-103). The disclosure must be prominent, specific and written in plain language, and include a description of all of the following:

- The nature and extent of the conflict of interest.

- The potential impact on, and risk that the conflict could pose to, the client.
- How the conflict has been, or will be, addressed.

(Section 13.4(5)-(6), NI 31-103).

The amendments require disclosure before opening an account for the client if the conflict has been identified at that time, or in a timely manner upon identification of a conflict that had not been previously disclosed (section 13.4(7), NI 31-103).

Registered individuals are similarly required to identify and address material conflicts of interest and promptly report conflicts to their sponsoring firm (section 13.4.1, NI 31-103).

Misleading Communications

A registrant must not hold themselves out in a manner that could reasonably be expected to deceive or mislead any person or company as to any of the following:

- The proficiency, experience, qualifications or category of registration of the registrant.
- The nature of the person's relationship, or potential relationship with the registrant.
- The products or services provided, or to be provided, by the registrant.

(Section 13.18(1), NI 31-103).

Furthermore, a registered individual who interacts with clients must not use any of the following:

- A title, designation, award or recognition based partly or entirely on the registrant's sales activity or revenue generation.
- A corporate officer title, unless their sponsoring firm has appointed that registered individual to that corporate office pursuant to applicable corporate law.
- Any title or designation unless their sponsoring firm has approved the use.

(Section 13.18(2), NI 31-103).

Relationship Disclosure Information

The Client Focused Reforms revise the relationship disclosure requirements contained in section 14.2 of NI 31-103. The purpose of the changes is to maintain consistency with other revisions to NI 31-103, and to bolster the principle that "a registrant must deliver to a client all information that a reasonable investor would consider important about the client's relationship with the registrant".

Changes to the relationship disclosure information requirements include:

- A general description of the products and services offered by registered firms (for example, whether the firm will primarily or exclusively offer proprietary products to the client) (section 14.2(2)(b.1), NI 31-103).

- A general description of the benefits received, or expected to be received, by the registrant, from a person other than the client in connection with the client's purchase or ownership of a security through the registrant (section 14.2(2)(h), NI 31-103).
- A general explanation of the potential impact of fees on a client's investment returns (section 14.2(2)(o), NI 31-103).

Registered firms must also disclose, before trading in any account that is not a managed account, if there are any investment fund management expense fees or other ongoing fees that the client may incur in connection with the relevant security (section 14.2.1(1)(d), NI 31-103).

Transition Period for Client Focused Reforms

Amendments to NI 31-103 relating to conflicts of interest took effect on December 31, 2020. Amendments relating to relationship disclosure information requirements were originally scheduled to take effect on December 31, 2020, but the CSA announced on April 16, 2020 that implementation of the relationship disclosure requirements will be postponed so that they will come into effect at the same time as the remaining amendments on December 31, 2021.

Exemptions from Registration Requirements

Although a person may be conducting a registrable activity, securities regulation may nevertheless provide an exemption from the obligation to register with securities regulators. Exemptions may be available for certain transactions, securities or types of clients.

For example, exemption from the requirement to register as a dealer is available for:

- Trades with registered dealers (section 8.5, NI 31-103).
- Trades by plan administrators (section 8.16, NI 31-103).
- Trades in connection with reinvestment plans (section 8.17, NI 31-103).
- Trades of specified debt (section 8.21, NI 31-103).
- Trades of foreign securities and certain debt securities by persons who qualify as an international dealer (section 8.18, NI 31-103).
- Trades by certain U.S. broker dealers (local exemption orders, or exemption application to be filed).

Similarly, exemption from the requirement to register as an adviser is available for:

- Incidental advice provided by dealers on accounts where they do not exercise discretionary authority (section 8.23, NI 31-103).
- Advice provided by IIROC members in respect of accounts over which they have discretionary authority (section 8.24, NI 31-103).
- Providing general advice (such as where advice is not tailored) (section 8.25, NI 31-103).

- Advice in respect of foreign securities provided by persons who qualify as an international adviser (section 8.26, NI 31-103).
- Advice to U.S. resident clients by U.S. adviser firms (local exemption orders, or exemption application to be filed).

Recent amendments to NI 31-103 which came into force March 1, 2021, removed an exemption from the requirement to register as a dealer which previously applied to trades of syndicated mortgages in Ontario, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Yukon. The new registration requirements under the amendments will only apply to syndicated mortgages distributed after the effective date of the amendments. Existing mortgages will not be affected.

International Dealer and International Adviser Exemption

For most dealers or advisers not resident in Canada, the most common exemption from registration is the international dealer or international adviser exemption. The international dealer or international adviser exemption generally allows a foreign dealer or foreign adviser, respectively, to do limited types of trades or advising, as applicable, with permitted clients, as long as the foreign dealer or adviser is registered, or in the case of advisers only, are exempt from registration, to perform such functions in its home jurisdiction and subject to certain conditions, including appointing an agent for service, filing of anti-money laundering reports and certain annual filings and fees (sections 8.18 and 8.26, NI 31-103).

The adviser registration requirement also does not apply to an "international sub-adviser" if the following requirements are met:

- The obligations of and duties of the sub-adviser are set out in a written agreement with the registered adviser or registered dealer.
- The registered adviser or registered dealer has entered into a written agreement with its client on whose behalf investment advice is or portfolio management services are to be provided, agreeing to be responsible for any loss that arises out of the sub-adviser's failure to:
    - exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the registrant and each client of the registrant for whose benefit the advice is or portfolio management services are to be provided; or
    - exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances

      (Section 8.26.1(1), NI 31-103).

The international sub-adviser exemption is not available unless all of the following apply:

- The sub-adviser's head office or principal place of business is in a foreign jurisdiction.
- The sub-adviser is registered in a category of registration, or operates under an exemption from registration, under the securities legislation of the foreign jurisdiction in which its head office or principal place of

business is located, that permits it to carry on the activities in that jurisdiction that registration as an adviser would permit it to carry on in the local jurisdiction.

- The sub-adviser engages in the business of an adviser in the foreign jurisdiction in which its head office or principal place of business is located.

  (Section 8.26.1(2), NI 31-103).

To the extent a person wishes to rely upon an exemption from registration, such person may still be subject to certain filing or reporting obligations with securities regulators. For example, a person wishing to rely on the international dealer or international adviser exemption must notify the securities regulatory authority that it intends to rely on such exemption, must provide prescribed notice to clients and will also be subject to periodic reporting requirements to securities regulators.

The CSA members (except Ontario) issued parallel orders of general application (Blanket Orders) granting an exemption from the requirement to register as a dealer or adviser to U.S. broker-dealer firms, U.S. adviser firms and their respective representatives operating from a local jurisdiction with U.S. resident clients, subject to certain conditions. The conditions include, (a) filing an information report with the regulator prior to relying on such order and updating same for changes, as applicable, (b) not trading and advising for any residents in the local jurisdiction, (c) filing such other information and records about trading and advising activities as requested by the regulator from time to time, (d) not in default of securities laws in any jurisdiction, and (e) U.S. broker dealer firm must be registered under U.S. federal securities laws and a U.S. adviser firm must be registered or exempt from registration under U.S. federal securities laws. (CSA Staff Notice 32-301)

Since orders of general application are not authorized in Ontario; the OSC published OSC Rule 32-505 – Conditional Exemption from Registration for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario (OSC Rule 32-505) and related companion policy. OSC Rule 32-505 grants an exemption from the dealer and adviser registration requirements, as applicable, on substantially the same terms as the Blanket Orders issued by the CSA members in other Canadian jurisdictions. The Minister of Finance approved the rule on May 21, 2015. The rule and the related companion policy came into force June 5, 2015.

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