



Securities Law Subcommittee (Business Law) Ontario Bar Association | Association du Barreau de l'Ontario

June 29, 2007

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Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto ON M5H 3S8

Anne-Marie Beaudoin, Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse, 800, square Victoria
C.P. 246, 22 étage
Montréal, QC H4Z 1G3

Dear Sirs and Mesdames:

Re: Proposed National Instrument 31-103 *Registration Requirements*

This submission is made by the Securities Law Subcommittee (the "Subcommittee") of the Business Law Section of the Ontario Bar Association (the "OBA") in reply to the request for comments published February 23, 2007 (the "Request for Comments") regarding proposed National Instrument 31-103 Registration Requirements and Companion Policy 31-103 CP ("NI 31-103").

In general, we support the proposed national policy, including the proposed “business trigger” for the requirement to become registered. As well, we agree with the stated purpose of NI 31-103, that is, “to harmonize, streamline and modernize the registration regime across Canada” and to “create a flexible and administratively effective regime with reduced regulatory burden.” We focus our comments on two aspects of the proposal that cause concern.

International Dealers and Advisers

The proposals in NI 31-103 for a national system with respect to non-resident market intermediaries are welcome since, in keeping with the stated purpose of NI 31-103, they will provide a uniform regime for international dealers and advisers who wish to carry on business in the Canadian marketplace within prescribed limits. We also agree that it is preferable to exempt such intermediaries from registration in Canada rather than provide for special registration categories imposing limited obligations (as is currently the case in Ontario), since we do not believe that the current registration regime in Ontario for such intermediaries provided any significant protection beyond that which would be provided by requiring compliance with prescribed conditions in order to be exempt from registration. We note, however, that the types of permitted clients with whom the new exempt categories of international dealer and international portfolio manager would be able to deal would be substantially and in our view unnecessarily reduced from those types of clients permitted for international dealers and international advisers currently registered in Ontario.

Under NI 31-103, the proposed list of permitted clients that international dealers would be able to deal with would not include the following categories of permitted clients for international dealers currently registered in Ontario: high net worth individuals, large corporations, investment funds not advised by a Canadian registered portfolio managers, registered charities and persons in respect of which the owners are accredited investors. The impact of these provisions would be even more significant in other jurisdictions since, outside Ontario and Newfoundland, non-resident dealers are currently able to trade with all types of accredited investors without registration. In addition, under NI 31,103, international dealers would not be able to trade in foreign securities that are inter-listed in Canada (currently included within the definition of “foreign securities” in which international dealers registered in Ontario are permitted to deal) and certain debt securities. As a result, international dealers who wish to trade with individuals or entities in these categories or who wish to deal in securities that do not fall within the categories permitted under the new registration exemption would need to be registered as exempt dealers.

Under NI 31-103, the proposed list of permitted clients for international portfolio managers excludes (in addition to those excluded for international dealers): investment dealers, portfolio managers, investment funds advised by Canadian registered portfolio manager and a person acting on behalf of a fully managed account where that person is registered in Canada or a foreign jurisdiction as an adviser. Therefore, under NI 31-102 Canadian funds with international advisers as their portfolio managers will be required to have those advisers become sub-advisers or become fully registered.

We submit that the permitted categories of clients for international dealers and advisers exempt from registration under NI 31-103, as well as the permitted securities in which international dealers may deal, should more closely track those permitted for international dealers and advisers currently registered under Ontario securities legislation. In our view, the limitations inherent in the current Ontario legislation are more appropriate than more restrictive provisions proposed in NI 31-103 given the limited scope and/or presumed sophistication of the permitted categories of clients in Ontario as well as the greater access provided to the non-resident intermediaries' expertise with respect to foreign securities.

Exempt Market Dealers

NI 31-103 would add a new category of registration for dealers who restrict their activities to the exempt private placement market. While modeled on the existing category of "limited market dealer" in Ontario and Newfoundland, it would not contain the exemptions from most of the dealer requirements contained in those regimes.

Under the proposed business trigger, some entities who are currently limited market dealers in Ontario would no longer be required to be registered (e.g. ones that provide merger and acquisition advisory services), and we agree with that this is an appropriate result. However, a large number of limited market dealers (and persons performing similar functions in other provinces) provide capital raising advisory services, and serve issuers that are often too small to be able to hire a full-service firm. The new exempt market dealer regime could have an adverse impact on the ability of venture issuers to raise capital in the exempt market.

For example, NI 31-103 would impose minimum capital and insurance requirements that are not currently imposed on limited market dealers. This will be onerous for many and cause them to leave the business. We believe the current exemption from such requirements should be left in place for exempt market dealers that do not hold client assets (other than subscriptions or prepayments for pending investments) or act as a custodian. The requirement for segregation of subscriptions and prepayments should remain.

If a dealer does not hold client assets and is not a custodian, capital and insurance requirements are unnecessary as customers and other market participants would not be adversely affected by the dealer's financial failure.

The extensive new record-keeping provisions proposed in NI 31-103 would also be an impediment to entering (or remaining in) the business.

While we agree in principle with the proposed proficiency requirements, the proposal is silent as to if or how persons already in the business will be grandfathered. For example, if someone passed all IDA proficiency exams five years ago and subsequently left their firm to run a limited market dealer, would he or she be required to write a new set of exams, or will they be given credit for their business experience?

We also have concerns about the impact the new registration category will have on the individual CSA members. When universal registration was introduced in Ontario, a huge registration backlog was created that took years to clear. A similar outcome may occur in other jurisdictions under the proposed new regime. In addition, will the various CSA members have the necessary compliance resources to monitor the conduct of exempt market dealers?

If the CSA determines to introduce this new category, we recommend that it also adopt the "light touch" regulatory regime currently in place for limited market dealers. This will minimize the negative impact of the new regime. Going forward, we recommend that the CSA develop an appropriate regulatory regime that focuses on the actual risks to customers, issuers and other market participants that are created by the specific activities undertaken by limited market dealers.

Response to Specific Question in Request for Comments

In response to Question #14 posed in the request for comments, we are of the view that the registration exemptions should all remain in NI 45-106 in order to keep registration and prospectus exemptions in one instrument for ease of reference.

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The members of the Subcommittee are listed in the attached appendix. Please note that not all of the members of the Subcommittee participated in or reviewed this submission, and that the views expressed are not necessarily those of the firms and organizations represented by members of the Subcommittee.

We appreciate this opportunity to comment on the proposed amendments to NI 31-103. If you have any questions, please direct them to Barbara Hendrickson (416-865-7903, barbara.hendrickson@mcmbm.com), Timothy Baikie (416-572-2000 extension 2282, tbaikie@abanet.org) or Janne Duncan (416-868-3357, jduncan@tor.fasken.com).

Yours truly,

Securities Law Subcommittee
Business Law Section
Ontario Bar Association

Appendix

OBA SECURITIES LAW SUBCOMMITTEE

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Aaron J. Atkinson/Janne M. Duncan/Nancy Eastman, *Fasken Martineau DuMoulin LLP*
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Mary Condon, *Osgoode Hall Law School of York University*
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Eleanor K. Farrell/Andrea Jeffery (Secretary), *CPP Investment Board*
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Glen R. Johnson/Cornell C.V. Wright, *Torys LLP*
William R. Johnstone/Kathleen Skerrett, *Gardiner Roberts LLP*
David R. Kerr/Kay Y. Song, *Manulife Financial*
Samir Y.A. Khan, *Russell Investments Canada Limited*
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Robert N. Spiegel, *Stikeman, Graham, Keeley & Spiegel LLP*
Philippe Tardif, *Borden Ladner Gervais LLP*
D. Grant Vingoe, *Arnold & Porter LLP*

Liaison:

Erez Blumberger, *Ontario Securities Commission*
Luana DiCandia/Julie K. Shin, *Toronto Stock Exchange*
Nancy N. Mehrad, *Investment Dealers Association of Canada*