

**NOTICE OF PROPOSED MULTILATERAL INSTRUMENT 33-109,  
FORMS 33-109F1, 33-109F2, 33-109F3, 33-109F4, 33-109F5  
AND COMPANION POLICY 33-109CP  
REGISTRATION INFORMATION REQUIREMENTS**

**Substance and Purpose of Proposed Instrument**

The substance and purpose of the proposed Instrument are to consolidate and harmonize requirements regarding the initial submission of registration information and the updating of that information.

The proposed Instrument is expected to be implemented as a rule, regulation or other appropriate instrument in all of the jurisdictions represented by the Canadian Securities Administrators (the "CSA"), except Quebec.

Because this Instrument is not proposed for adoption in all of the jurisdictions of the CSA, it is called a Multilateral Instrument rather than a National Instrument. However, since this Instrument is being adopted in a number of jurisdictions, it is numbered as a national instrument.

**Summary of Proposed Instrument**

Section 2.1 provides that a firm applying for registration shall submit a completed Form 3 *Application for Registration as Dealer, Adviser or Underwriter* in paper format. Although staff published for comment a proposed replacement to the current Form 3 on August 4, 2000 and July 6, 2001, staff anticipates that the current form will remain in use until a later release of the National Registration Database ("NRD") permits firms to submit all of their registration information in NRD format.

Under section 2.1, an applicant firm is also required to submit a completed Form 33-109F3 *Business Locations other than Head Office* for each of its business locations. Form 33-109F3 is new and is to be submitted in NRD format in accordance with Multilateral Instrument 31-102 National Registration Database ("MI 31-102"). It provides for the collection of some of the branch and sub-branch information that is currently collected in Form 3. Form 33-109F3 has been created to specify what information regarding business locations is to be submitted to NRD.

Section 2.1 also requires applicant firms to submit a completed Form 33-109F4 *Registration Information for an Individual* for each non-registered individual of the firm in accordance with MI 31-102.

Section 2.2 provides that an individual who is applying for registration shall submit either a completed Form 31-109F4 or, pursuant to subsection (2), a completed Form 33-109F2 *Change of Individual Categories* in accordance with MI 31-102. Form 33-109F2 is to be used for a registration application only if the applicant is applying to become registered with a firm in which the applicant is currently a non-registered individual. Submitting an application in Form 33-109F2 in this circumstance is necessary to ensure that the applicant, who will have already submitted data as a non-registered individual using Form 33-109F4, does not create a second set of data in respect of himself or herself in NRD.

Section 3.1 provides that each registered firm shall notify the regulator of a change to any information previously submitted in Form 3 within five business days of the change. A notice submitted under section 3.1 shall be made by submitting a completed Form 33-109F5 *Change of Registration Information* in paper format. Under subsection 3.1(3), a registered firm is not required to submit a Form 33-109F5 in respect of certain changes to Form 3 information if notice is otherwise provided under the Instrument.

Under section 3.3, a registered firm is required to submit a completed Form 33-109F4 in accordance with MI 31-102 for a non-registered individual within five business days of the individual becoming a non-registered individual of the registered firm.

Section 4.1 provides that each registered individual must notify the regulator of a change to any information previously submitted in Form 33-109F4. Other than information under Item 3 - *Personal Information* or Item 8 - *Proficiency*, registered individuals shall notify the regulator of changes to their Form 33-109F4 information within five business days of the change. Registered individuals shall notify the regulator of changes to information required under Item 3 and Item 8 within one year of the change.

Section 4.2 provides that a registered individual who applies to change his or her registration category shall make the application by submitting a completed Form 33-109F2 in accordance with MI 31-102.

Under section 4.3, a registered firm is required to notify the regulator of the termination of a registered individual by submitting a Form 33-109F1 in accordance with MI 31-102 within five business days of the termination.

Section 5.1 provides that a registered firm must notify the regulator of a change to any information previously submitted in Form 33-109F4 for a non-registered individual. Other than information under Item 3, a registered firm shall notify the regulator of changes to a non-registered individual's Form 33-109F4 information within five business days of the change. Registered firms shall notify the regulator of changes to information required under Item 3 within one year of the change.

Subsection 5.1(3) provides that a registered firm shall notify the regulator of a change to information in Item 6 *Categories of Registered and Non-registered Individuals* of Form 33-109F4 for a non-registered individual by submitting a completed Form 33-109F2 in accordance with MI 31-102 within 5 business days of the change.

Under section 5.2, a registered firm is required to notify the regulator if an individual ceases to be a non-registered individual of the firm by submitting a Form 33-109F1 in accordance with MI 31-102 within five business days of the termination.

Section 6.1 of the proposed Instrument requires that a sponsoring firm exercises due diligence to ensure that information submitted by the firm for a non-registered individual, or by a registered individual or an individual applying for registration, is true and complete. Section 6.1 also requires that documents used by a firm to satisfy its due diligence obligations shall be retained for a period of 7 years and shall be kept at the location of the registered firm at which the individual is working. Subsection 6.1(5) provides that a firm that retains a document under this section in respect of a submission through NRD shall record the NRD submission number on the document.

Part 8 provides that during a period several weeks before the availability of NRD, a registered firm is exempt from several notification requirements under the Instrument if the registered firm submits the required notices within 15 business days of receiving access to NRD.

Section 8.5 provides that a registered individual who has not submitted a Form 33-109F4 shall notify the regulator of a change to any information previously submitted in Form 4. Section 8.5 also provides that if a registered individual provides notice of a change to Form 4 information the individual is required to submit a Form 33-109F4 in accordance with MI 31-102.

Similarly, section 8.7 provides that a registered firm that has not submitted a Form 33-109F4 for a non-registered individual shall notify the regulator of a change to any information previously submitted in Form 4 for the individual. Section 8.7 also provides that if a registered firm provides notice of a change to Form 4 information for a non-registered individual the firm is required to submit a Form 33-109F4 for the individual in accordance with MI 31-102.

Form 33-109F4 will replace the current Form 4. Sections 2.1 and 2.2 are intended to replace section 129 of the Regulations. Parts 3, 4, and 5 are intended to replace section 33<sup>1</sup> of the *Securities Act* (the "Act") and subsections 132(2) and 133(3) of the Regulations.

### **Related Instruments**

The proposed Instrument is related to proposed Rule 33-506 (*Commodity Futures Act*) Registration Information Requirements, which is also being published for comment in this bulletin.

The proposed Instrument is related to proposed MI 31-102. Staff intends that the proposed Instrument and MI 31-102 will come into force concurrently.

### **Regulations to be Amended and Revoked**

Form 4, section 129, subsection 132(2), subsection 132(3), subsection 133(2), subsection 135(1) and section 136 of the Regulation will be revoked. Subsection 135(3) will also be revoked to ensure that the registration information of registrants that are reporting issuers is kept current. Section 33 of the Act, concerning notices of change in registration, was repealed under the *More Tax Cuts for Jobs, Growth and Prosperity Act, 1999*. It is intended that the provision repealing section 33 will come into force on the same day as the proposed Instrument.

### **Authority for Proposed Instrument**

Paragraph 143(1)1 of the Act authorizes the Commission to make rules prescribing requirements in respect of

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<sup>1</sup> Section 33 of the Securities Act, concerning notices of change in registration, was repealed under the *More Tax Cuts for Jobs, Growth and Prosperity Act, 1999*. The provision repealing section 33 will come into force on a day to be named by proclamation of the Lieutenant Governor.

applications for registration and the renewal of registration, amendment, expiration or surrender of registration and in respect of suspension, cancellation or reinstatement of registration.

Paragraph 143(1)7 of the Act authorizes the Commission to make rules prescribing requirements in respect of the disclosure or furnishing of information to the Commission by registrants.

Paragraph 143(1)10 of the Act authorizes the Commission to make rules prescribing requirements in respect of the books, records and other documents required by subsection 19(1) to be kept by market participants, including the form in which and the period for which the books, records and other documents are to be kept.

### **Alternatives Considered**

In the process of developing this Instrument, the Commission did not consider any other alternatives.

### **Unpublished Materials**

In proposing the Instrument, the Commission has not relied on any significant unpublished study, report, decision or other written materials.

### **Anticipated Costs and Benefits**

The proposed Instrument will harmonize the notification requirements described in the proposed Instrument in those jurisdictions in which the Instrument is adopted. NRD is expected to make the benefits of this harmonization particularly evident to firms and individuals registered in more than one jurisdiction because NRD will permit those registrants to meet their notification requirements by making a single submission through the system to multiple regulators.

Currently, under section 33 of the Act, registrants are required to notify the Director of some changes to registration information within five business days of the event. Pursuant to subsections 132(2) and 133(2), however, most changes to registration information are not required to be reported by registrants until their renewal. As a result, information that is very relevant to a determination of the registrant's continued suitability for registration may not be received by the Director for up to a year after the event is known to the registrant. Staff is of the view that any cost to registrants of identifying and submitting changes to their registration information throughout the year, rather than annually, is minimal and is offset by the increased investor protection resulting from the Commission being able to respond expeditiously to changes in registration information.

With the submission of Form 33-109F4 through NRD, staff intends no longer to ask that photographs, evidence of proficiency, and appointments of agent for service ("supporting documents") be submitted for non-registered individuals or applicants for registration. In some circumstances (for example, if an applicant has disclosed a prior bankruptcy), staff will continue to ask that further information be submitted outside NRD. Staff expects that firms will benefit significantly from this reduction in paper filings.

Since staff will no longer receive supporting documents outside NRD in support of Forms 33-109F4 submitted through NRD, Part 6 of the Instrument imposes a positive obligation on a sponsoring firm to exercise due diligence to ensure that information submitted in respect of individuals sponsored by the firm is true and complete. The Companion Policy provides guidance as to the Commission's view of this due diligence obligation. Part 6 also provides for a record-keeping requirement in respect of documents retained in support of a submission. Staff is of the view that this due diligence and record-keeping requirement will not impose significant additional costs on sponsoring firms since currently most firms likely perform a due diligence review of sponsored individuals.

### **Comments**

An earlier version of Form 33-109F4 (then called Form 31-102F4) was published for comment on July 6, 2001. Responses to the comments received are in Appendix A to this notice.

Interested parties are invited to make written submissions with respect to the proposed Instrument. Submissions received by March 18, 2002 will be considered.

Submissions should be sent to all Canadian securities regulatory authorities listed below in care of the Ontario Securities Commission in duplicate, as indicated below:

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Securities Commission

The Manitoba Securities Commission  
Ontario Securities Commission  
Office of the Administrator, New Brunswick  
Registrar of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland  
Registrar of Securities, Northwest Territories  
Registrar of Securities, Nunavut  
Registrar of Securities, Yukon Territory

c/o John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 800, Box 55  
Toronto, Ontario  
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A diskette containing the submissions (in DOS or Windows format, preferably WordPerfect) should also be submitted. As the Act requires that a summary of written comments received during the comment period be published, confidentiality of submissions cannot be maintained.

Questions may be referred to:

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### **Proposed Instrument**

The text of the proposed Instrument follows, together with footnotes that are not part of the Instrument but have been included to provide background and explanation.

DATED: December 14, 2001