

Chapter 6

Request for Comments

6.1.1 Notice of Amendments to OSC Rule 31-502 – Proficiency Requirements for Registrants and OSC Rule 31-505 – Conditions of Registration and OSC Rule 35-502 – Non-Resident Advisers

NOTICE OF AMENDMENTS TO ONTARIO SECURITIES COMMISSION RULE 31-502 – PROFICIENCY REQUIREMENTS FOR REGISTRANTS AND RULE 31-505 – CONDITIONS OF REGISTRATION AND RULE 35-502 – NON-RESIDENT ADVISERS

Introduction

The Commission has, under section 143 of the *Securities Act* (the Act) made amendments (the Amendments) to Rule 31-502 – *Proficiency Requirements for Registrants*, Rule 31-505 – *Conditions of Registration* and Rule 35-502 – *Non-Resident Advisers* (collectively, the Rules).

The Amendments and the materials required by the Act to be delivered to the Minister of Finance were delivered on August 22, 2003. If the Minister approves the Amendments, does not reject the Amendments or return them to the Commission for further consideration, they will come into force on November 5, 2003.

On December 20, 2002, we published the Amendments for comment. We received submissions from six commentators. None of the revisions to the Amendments that have been made in response to the comments received and further deliberations are material. Accordingly, the Amendments are not subject to a further comment period. For a summary of the comments and our response to them, please see Appendix A to this Notice.

Substance and Purpose of the Amendments

The purpose of the Amendments is to provide alternative proficiency requirements for compliance personnel of adviser firms and clarify the roles assigned to individuals involved in the supervision of advisers' regulatory compliance.

Rule 31-502 will provide alternative proficiency requirements for compliance personnel of advisers that recognize practical expertise in compliance matters.

Rule 31-505 will require an adviser to designate a senior officer who will assume ultimate responsibility for the compliance function, while day-to-day supervision of the compliance function will be undertaken by a chief compliance officer whose proficiency is determined in accordance with the amended requirements under Rule 31-502. The chief compliance officer will be free to determine what responsibilities and skills are appropriate for any subordinates working in a compliance capacity. A single individual may undertake both roles if he or she meets the requirements of both.

The provisions in Rule 31-502 concerning relief from the time limit for the completion of required courses or examinations will be extended to individuals who have been registered in other provinces or territories or have obtained specified relevant work experience in a non-registered capacity after the expiry of the time limit. If the Minister approves the Amendments, Staff Notice 32-702 – *Applications for Exemptions from the Time Limits on Completion of Courses and Previous Registrations* will be withdrawn.

Provisions of Rule 31-502 concerning designated supervising representatives, partners or officers for associate representatives of advisers have been clarified to expressly state that the supervisor must be a registrant.

The requirement in Rule 35-502 for international advisers to designate a compliance officer has been removed.

The Amendments also include minor clarifications to the Rules.

Summary of Changes to the Amendments

There are no substantive changes to the Amendments from the version published on December 20, 2002. We have made the following minor changes based on the comments received and further deliberations:

- (a) technical corrections in references to the Chartered Financial Analyst program in Rule 31-502;
- (b) with respect to course completion time limits, addition of recognition for post-completion employment in relevant non-registered capacities during a period of up to three years before application for registration or re-registration;
- (c) deletion of references in Rule 31-502 to registration in reliance National Instrument 31-101, which was abandoned before ever coming into force;
- (d) correction of oversights in re-numbering and cross-referencing that were identified during final proof-reading of the Amendments.

Authority for the Amendments

The following provisions of the Act provide the Commission with authority to make the Rules and as such, to amend them: Paragraph 143(1)1 authorizes us to make rules prescribing requirements in respect of applications for registration and the renewal, amendment, expiration or surrender of registration. Paragraph 143(1)2 of the Act authorizes us to make rules prescribing the conditions of registration or other requirements for registrants or any category or sub-category of registrant. Paragraph 143(1)3 of the Act authorizes us to make rules extending any requirements prescribed under paragraph 143(1)2 to unregistered directors, partners, salespersons and officers of registrants.

Text of the Amendments

The text of the Amendments follows. Additions and changes to the Amendments as published on December 20, 2002 are underlined.

August 19, 2003.

AMENDMENTS TO RULE 31-502 — PROFICIENCY REQUIREMENTS FOR REGISTRANTS

1. Subsection 1.1 is amended by the deletion of “Examination” from the defined term “Chartered Financial Analyst Examination Program”.
2. Subsection 1.2(1) is amended by the deletion of the reference to Part 3 and by the addition of “or its equivalent in any other province or territory of Canada” after “previously registered in the relevant category”.
3. Subsection 1.2(2) is re-designated subsection 1.2(3) and amended by the deletion of both references to “subsection (1)” and their replacement with references to “subsections (1) and (2)”.
4. Section 1.2 is amended by the substitution of the following in place of the former subsection 1.2(2):
 - “(2) For the purposes of satisfying the course and examination requirements only of Part 3, an applicant for registration or reinstatement of registration must have
 - (a) completed a specified course or examination not more than three years before the date of the applicant’s application for registration or reinstatement;
 - (b) been previously registered in the relevant category or its equivalent in any other province or territory of Canada at any time during the three-year period immediately before the date of the applicant’s application for registration or reinstatement of registration; or
 - (c) having completed the specified course or examination more than three years before the date of the applicant’s application for registration or reinstatement, been employed by a Canadian financial institution or pension fund in the performance of research involving the financial analysis of investments or in the management or supervision of investment portfolios on a discretionary basis, at any time during the three-year period immediately before the date of the applicant’s application for registration or reinstatement of registration.”
5. The title of section 3.1 is amended by the deletion of “and Compliance Officers”, which is replaced with “, Chief Compliance Officers and Ultimately Responsible Persons”.
6. Subparagraph 3.1(1)(b)(i) is amended by the deletion of “the first year”, which is replaced with “Level 1”, and by the deletion of “Canadian”, which is replaced with “Chartered”, and the deletion of “Examination”.
7. Subparagraph 3.1(1)(c) is deleted and the punctuation of paragraph 3.1(1)(b) adjusted accordingly.
8. Subsection 3.1(2) is re-designated subsection 3.1(3) and amended by the deletion of “as the compliance officer under section 1.3 of Rule 31-505 Conditions of Registration or”.
9. Section 3.1 is amended by the substitution of the following in place of the former subsection 3.1(2):
 - “(2) An individual shall not be designated by a securities adviser as the chief compliance officer under section 1.3 of Rule 31-505 Conditions of Registration unless the individual
 - (a) has been granted registration previously as a representative, partner or officer of a securities adviser, investment counsel or portfolio manager;
 - (b) has
 - (i) obtained professional designation as a lawyer or Chartered Accountant in a Canadian jurisdiction or the equivalent in a foreign jurisdiction and is in good standing with the appropriate self-regulatory body or regulatory agency;
 - (ii) completed the Canadian Securities Course and the Partners, Directors and Senior Officers Qualifying Examination; and
 - (iii) either
 - (A) been employed for three years by a registered dealer or a registered adviser; or

- (B) been providing professional services to the securities industry for three years and employed by a registered dealer or registered adviser for one year; or
- (c) has
 - (i) completed the Canadian Securities Course and the Partners, Directors and Senior Officers Qualifying Examination; and
 - (ii) either
 - (A) been employed for five years by a registered dealer or a registered adviser, including three years under the supervision of the designated or chief compliance officer of a registered dealer or a registered adviser; or
 - (B) been employed for five years by a financial intermediary regulated by the federal Office of the Superintendent of Financial Institutions in a compliance capacity relating to portfolio management and employed by a registered dealer or registered adviser for one year;

provided that an individual designated as chief compliance officer pursuant to paragraph (b) or (c) shall not act as an adviser.”

10. The title of section 3.2 is amended by the deletion of “and Compliance Officers”, which is replaced with “, Chief Compliance Officers and Ultimately Responsible Persons”.
11. Subparagraph 3.2(1)(b)(i) is amended by the deletion of “the first year”, which is replaced with “Level 1”, and by the deletion of “Examination”, which appears twice.
12. Subparagraph 3.2(1)(d) is deleted and the punctuation of subparagraph 3.2(1)(c)(ii) adjusted accordingly.
13. Subsection 3.2(2) is re-designated subsection 3.2(3) and amended by the deletion of “as the compliance officer under section 1.3 of Rule 31-505 Conditions of Registration or”.
14. Section 3.2 is amended by replacement of the former subsection 3.2(2) with the following:
 - “(2) An individual shall not be designated by an investment counsel or portfolio manager as the chief compliance officer under section 1.3 of Rule 31-505 Conditions of Registration unless the individual
 - (a) has been granted registration previously as a representative, partner or officer of an investment counsel or portfolio manager, other than in reliance on section 3.3 or under a registration subject to terms and conditions requiring the individual’s advising activities to be supervised, or as an investment counsel or portfolio manager;
 - (b) has
 - (i) obtained professional designation as a lawyer or Chartered Accountant in a Canadian jurisdiction or the equivalent in a foreign jurisdiction and is in good standing with the appropriate self-regulatory body or regulatory agency;
 - (ii) completed the Canadian Securities Course and the Partners, Directors and Senior Officers Qualifying Examination; and
 - (iii) either
 - (A) been employed for three years by a registered dealer or a registered adviser; or
 - (B) been providing professional services to the securities industry for three years and employed by a registered dealer or registered adviser for one year; or
 - (c) has
 - (i) completed the Canadian Securities Course and the Partners, Directors and Senior Officers Qualifying Examination; and

(ii) either

- (A) been employed for five years by a registered dealer or a registered adviser, including three years under the supervision of the designated or chief compliance officer of a registered dealer or a registered adviser; or
- (B) been employed for five years by a financial intermediary regulated by the federal Office of the Superintendent of Financial Institutions in a compliance capacity relating to portfolio management and employed by a registered dealer or registered adviser for one year;

provided that an individual designated as chief compliance officer pursuant to paragraph (b) or (c) shall not act as an adviser."

15. Subsection 3.3(3) is amended by the addition of the word "registered" after "shall designate a".

16. Subsection 3.3(4) is amended by the addition of the word "registered" after "the designated".

17. Part 3 is amended by the addition of the following section 3.4:

"3.4 New Entrants Equivalency – In this Part, an individual may meet a requirement to complete the Canadian Securities Course by completion of the New Entrants Examination and the U.S. Series 7 Examination."

AMENDMENTS TO RULE 31-505 — CONDITIONS OF REGISTRATION

18. The title of section 1.3 is amended by the addition of "or Chief Compliance Officer and Ultimately Responsible Person" after "Compliance Officer".

19. Subsection 1.3(1) is re-designated paragraph 1.3(1)(a) and amended by the deletion of "or adviser", which appears twice.

20. Subsection 1.3(2) is re-designated paragraph 1.3(1)(b) and amended by the deletion of "or adviser", the deletion of "and supervising advice provided to each client" and the replacement of the reference to "subsection (1)" with a reference to "paragraph (a)".

21. Subsection 1.3(3) is re-designated paragraph 1.3(1)(c) and amended by the deletion of "or an officer in the same category of registration as the adviser," and the deletion of "in each case" and the replacement of the references to "subsections (1) and (2)" with references to "paragraphs (a) and (b)".

22. Subsection 1.3(4) is re-designated paragraph 1.3(1)(d) and amended by the deletion of "or adviser" and the replacement of the reference to "subsection (1)" with a reference to "paragraph (a)."

23. Section 1.3 is amended by the addition of the following subsection 1.3(2):

- "(2) (a) A registered adviser shall designate an executive officer as the individual who is ultimately responsible for discharging the obligations of the registered adviser under Ontario securities law.
- (b) "Executive officer" means for purposes of paragraph (a) a registered partner or registered officer who is,
 - (i) president, chief executive officer, chief financial officer, secretary, general counsel or general manager of the registered adviser or any other individual who performs functions for it which are similar to those normally performed by an individual occupying any such office, or
 - (ii) one of the five highest paid partners or officers of the registered adviser.
- (c) The ultimately responsible person designated under paragraph (a) shall ensure that policies and procedures for the discharge of the obligations of the registered adviser under Ontario securities law are developed and implemented.

- (d) A registered adviser shall also designate a partner or officer as the chief compliance officer who shall either be the same individual as the ultimately responsible person designated under paragraph (a) or shall report to that individual.
 - (e) The chief compliance officer designated under paragraph (d) shall supervise the registered adviser's adherence to the policies and procedures referred to in paragraph (c) and shall also be responsible for supervising the opening of each new account and supervising advice provided to each client or, if a branch manager is designated under subsection 1.4(1), for supervising the branch manager's conduct of the activities specified in subsection 1.4(2).
 - (f) The ultimately responsible person designated under paragraph (a) shall report directly to the board of directors or partnership annually concerning the discharge of the obligations of the registered adviser under Ontario securities law and shall have a right to directly access the board of directors or partnership at such other times as he or she may deem necessary or advisable.
 - (g) An applicant for registration or reinstatement of registration as an adviser shall deliver to the Commission, with the application, written notice of the name of the person or persons proposed to be designated under paragraphs (a) and (d)."
24. Subsection 1.4(2) is amended by the deletion of "section 1.3" and its replacement with "paragraph 1.3(1)(a) in the case of a dealer and the chief compliance officer designated under paragraph 1.3(2)(d) in the case of an adviser."

Amendments to Rule 35-502 – Non-Resident Advisers

25. Part 3 is amended by the addition of the following section 3.14:
- "Partial Exemption from Rule 31-505 – An international adviser is exempt from subsection 1.3(2) of Rule 31-505."

**AMENDMENTS TO
ONTARIO SECURITIES COMMISSION
RULE 31-502 – PROFICIENCY REQUIREMENTS FOR REGISTRANTS
AND
RULE 31-505 – CONDITIONS OF REGISTRATION
AND
RULE 35-502 – NON-RESIDENT ADVISERS**

APPENDIX A

Summary of Comments Received on Proposed Amendments to Ontario Securities Commission Rule 31-502 – Proficiency Requirements For Registrants and Rule 31-505 – Conditions of Registration and Rule 35-502 – Non-Resident Advisers and Response of the Ontario Securities Commission

1. INTRODUCTION

On December 20, 2002, the Ontario Securities Commission (the Commission) published a Notice and Request for Comments regarding proposed amendments (the Amendments) to Rule 31-502 – *Proficiency Requirements for Registrants*, Rule 31-505 – *Conditions of Registration* and Rule 35-502 – *Non-Resident Advisers*. The Amendments concern the requirements for compliance personnel of registered advisers as well as some minor clarifications in respect of other proficiency requirements.

During the comment period on the Amendments, which expired on March 31, 2003, the Commission received submissions from the following parties:

1. D'Arcy Chadwick (RBC Financial Group)
2. Catherine Darmody (Open Access Limited)
3. Thomas Lunan (Toronto Society of Financial Analysts)
4. John Mountain (Investment Funds Institute of Canada)
5. Steven Rostowsky (Investment Counsel Association of Canada)
6. David L. Yu and Georgene B. Palacky (Association for Investment Management and Research)

The Commission has considered all submissions received and would like to take this opportunity to thank each of the commentators for their views.

Copies of the comment letters may be viewed at the Commission's website, www.osc.gov.on.ca under "Rules & Regulation\ Rulemaking & Notices\ Rules, Proposed & Final".

The following is a summary of the comments received, together with the Commission's responses.

2. GENERAL COMMENTS

Three commentators supported the Amendments in general. One of the three letters of support also included a suggestion regarding the inclusion of regulatory staff in the category of individuals qualified for designation as chief compliance officer. One other commentator proposed a significantly different analysis of compliance personnel proficiency requirements. Two other commentators were concerned with particulars of the adviser proficiency requirements as they relate to the Chartered Financial Analyst (CFA) qualification.

3. SPECIFIC COMMENTS

a. Staff of Securities Regulators and SROs

One commentator suggested enlarging the group of professionally qualified individuals eligible to be designated as chief compliance officer to include individuals with significant work experience at a securities regulatory authority or a self-regulatory organization.

Lawyers and accountants who have worked at a securities regulatory authority or a self-regulatory organization are assumed to be included in the provision in the Amendments for those who have been providing professional services to the securities industry. Other employees of securities regulatory authorities and self-regulatory organizations work in a variety of capacities

and the Commission therefore believes it is preferable that the relevance of their experience be considered on an individual basis further to applications for discretionary relief.

b. Differentiated Proficiency Requirements

One commentator suggested differentiating between the proficiency requirements for compliance personnel of investment counsel and portfolio manager firms, depending whether the firm specializes in advice with respect to managed funds or manages portfolios of securities other than managed funds.

There is no corresponding differentiation in the proficiency requirements for adviser registrants and the Commission is not at this time considering any change in this regard. Changing the Amendments in the manner suggested would therefore be inconsistent with the policy analysis concerning adviser proficiency. The Commission is also unconvinced as to the practicality of the suggestion. Accordingly, the Commission has decided not to make the changes suggested.

c. Concerning the CFA

(i) At present, the provision in Rule 31-502 concerning time limits on completion of courses allows an applicant for registration to have completed prescribed courses within three years of the date of application or to have been previously registered in the relevant category any time during that three year period. Comments from one body representing CFAs pointed out that work experience of a CFA that would have the practical effect of maintaining his or her proficiency after the CFA designation was obtained would not necessarily involve registration. This may be because the CFA-designated individual works as an analyst or engages in otherwise registerable activities, such as portfolio management, as an employee of a financial institution or pension fund. The commentator argues for the addition of recognition for employment of individuals in relevant non-registered capacities during a period of up to three years before their application for registration.

The Commission accepts this suggestion for the reasons set forth by the commentator and believes that the arguments put forward by the commentator apply equally any other course or examination which forms part of the adviser proficiency requirements. The Amendments to subsection 1.2(1) of Rule 31-502 have been changed accordingly.

(ii) Another body representing CFAs suggested several technical corrections to references to the CFA program in Rule 31-502, and argued for abandoning the requirement that prescribed courses should be completed within any specified time period. Instead of the approach proposed by the first CFA commentator, it was suggested that the work experience, responsibilities, and knowledge of each applicant should be reviewed on an individual basis as part of the registration process.

The Commission accepts the suggestion to make technical corrections and the Amendments now include various minor changes to references to the CFA program in Rule 31-502. The Commission does not accept the second suggestion, in part because the resources to undertake a detailed review of the proficiency of each individual applicant for registration are not available. Moreover, objective requirements as to courses and time periods provide a level playing field for all applicants. Individuals who do not have the prescribed qualifications have the option of applying for discretionary relief. Implementation of the first CFA commentator's suggestion will, in any event, address concerns that individuals who maintain their skills working in an unregistered capacity may be prejudiced by the unamended requirements.