

CSA Staff Notice 31-329

Omnibus/blanket orders exempting registrants from certain provisions of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and related staff positions

September 28, 2011

Purpose

Since the coming into effect of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103), the Canadian Securities Administrators (the CSA or we) have received applications for exemptive relief, comments and inquiries in respect of certain provisions of NI 31-103. CSA members have issued a number of parallel orders (the “orders”) or related staff positions, as described in this notice and relating to:

1. the requirement to register when trading in short-term debt instruments;
2. the restrictions on the registration exemptions for international dealers and international advisers in sections 8.18 [*international dealer*] and 8.26 [*international adviser*]; and
3. the requirement in section 14.2(1) to provide relationship disclosure information.

This Notice summarizes the orders and related staff positions.

1. Interim relief exempting certain persons and companies from the requirement to register when trading in short-term debt instruments

Background

All CSA members except Ontario issued parallel orders of general application, effective March 27, 2010 (the “2010 orders”), that provided that the dealer registration requirement does not apply to

- (i) a bank listed in Schedule I, II or III to the *Bank Act* (Canada);
- (ii) an association to which the *Cooperative Credit Associations Act* (Canada) applies or a central cooperative credit society for which an order has been made under subsection 473 (1) of that Act;
- (iii) a loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative or credit union league or federation that is authorized by a statute of Canada or of a

jurisdiction in Canada to carry on business in Canada or in any jurisdiction in Canada, as the case may be; and

(iv) the Business Development Bank of Canada;

in respect of a trade in a negotiable promissory note or commercial paper maturing not more than one year from the date of issue, if the note or commercial paper traded

(a) is not convertible or exchangeable into or accompanied by a right to purchase another security other than a security described in the order, and

(b) has an approved credit rating as specified in the order.

Ontario

In Ontario there are alternate exemptions from the dealer registration requirement that may be available for trading in short-term debt, such as the exemption in section 8.5 [*trades through or to a registered dealer*] of NI 31-103 and, in the case of financial institutions, the exemptions in section 35.1 of the *Securities Act* (Ontario) and section 4.1 of the Ontario Securities Commission (“OSC”) Rule 45-501 *Ontario Prospectus and Registration Exemptions*.

New orders

The 2010 orders expire on September 28, 2011. CSA members, other than the OSC (for the reasons indicated above), have issued parallel orders that continue to provide interim relief exempting certain persons and companies from the requirement to register when trading in short-term debt instruments, on the same terms and conditions as the 2010 orders. These new orders will expire on September 28, 2014.

Ongoing work

We are continuing our work in this area and may publish proposed amendments to NI 31-103 for comment in the future.

2. Interim relief from the new restrictions on registration exemptions for international dealers and international advisers in sections 8.18 and 8.26 of NI 31-103

Background

Effective July 11, 2011, amendments to NI 31-103 came into effect. The amendments incorporated new restrictions in the registration exemptions in sections 8.18 [*international dealer*] and 8.26 [*international adviser*] of NI 31-103. These sections now contemplate an international dealer or adviser dealing with a “Canadian permitted client” instead of a “permitted client”. After we published the amendments, it was brought to CSA staff’s attention that the new definition may be more restrictive than we intended.

As we indicated in our June 25, 2010 notice¹, the purpose of these amendments was to clarify our intent that the exemptions may not be relied upon to trade with (or advise) foreign clients. Instead, as we had previously indicated in our response to comments on the first publication of NI 31-103, the intention of these exemptions was to allow Canadian investors access to foreign securities offerings and foreign expertise.²

Relief being provided (other than by the OSC)

As a result, all CSA members, other than the OSC, have issued parallel orders that provide interim relief from the new restrictions. This relief allows a person or company to rely on the exemptions in section 8.18 (the “international dealer exemption”) or section 8.26 (the “international adviser exemption”) of NI 31-103, as if the term “Canadian permitted client” is read as “permitted client”.

OSC staff position

The OSC will not be issuing an order of this nature given that orders of general application are not authorized under Ontario securities law. However, OSC staff are of the view that, while work in this area is ongoing, there is no public interest in recommending or pursuing an enforcement action against a person or company for failure to comply with the applicable dealer or adviser registration requirement in circumstances where the person or company:

- (a) would satisfy the requirements of the corresponding international dealer exemption or international adviser exemption, if the definition of “Canadian permitted client” in these sections instead referred to a “permitted client” (as now defined in section 1.1 [*definitions of terms used throughout this Instrument*] of NI 31-103 but excluding, in the case of the international adviser exemption, a dealer or adviser registered under the securities legislation of a jurisdiction of Canada);
- (b) complies with the other provisions of Ontario securities law applying to those who rely on the international dealer exemption or international adviser exemption, including OSC Rule 13-502 *Fees*; and
- (c) identifies on the Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service* required to be filed under section 8.18(3)(e) or section 8.26(4)(f) that, in addition to the corresponding international dealer exemption or international adviser exemption, the person or company is also relying on this notice (by checking, in paragraph 6, the applicable exemption and also checking the “other” box with a notation stating that “*CSA Staff Notice 31-329 is being relied on*”).

The above position of OSC staff may be withdrawn after further consideration of this matter. OSC staff expect that this position will be withdrawn on the coming into effect of any amendments to NI 31-103 dealing with the definition of “Canadian permitted client”.

¹ Notice and Request for Comments on Proposed Amendments to National Instrument 31-103 and National Instrument 33-109, published on June 25, 2010.

² See page 18 of “Summary of Comments received by June 30, 2007”, published on February 29, 2008.

Ongoing work

We are continuing our work in this area and expect to publish proposed amendments to NI 31-103 for comment in the future.

3. Interim relief from the requirement in section 14.2(1) of NI 31-103 to provide relationship disclosure information for SRO members and for mutual fund dealers in Québec

Background

Section 14.2(1) of NI 31-103 sets out the principle that a registered firm must deliver to a client all information that a reasonable investor would consider important about the client's relationship with the registrant. All CSA members have issued parallel orders that extend previously issued temporary relief from the requirement to provide relationship disclosure information in compliance with section 14.2(1) of NI 31-103:

- for firms that are members of the Investment Industry Regulatory Organization of Canada (IIROC);
- for members of the Mutual Fund Dealers Association of Canada (the MFDA); and
- for mutual fund dealers in Québec.

Relief from the requirement to provide the relationship disclosure information prescribed by section 14.2(1) of NI 31-103 for IIROC member firms

IIROC is currently finalizing its proposal on relationship disclosure information (the IIROC RDI proposal). The purpose of the IIROC RDI proposal is to set out detailed requirements to assist IIROC member firms to comply with the general principle in section 14.2(1) of NI 31-103.

It is anticipated that the IIROC RDI proposal will be finalized and new IIROC member rules reflecting the IIROC RDI proposal (the IIROC RDI rules) will be approved before the end of 2011, with provisions for their implementation in phases over a two-year transition period.

All CSA members have issued parallel orders that exempt a dealer that is a member of IIROC from the application of the requirements of section 14.2(1) of NI 31-103 provided that after the IIROC RDI rules are approved, the IIROC member complies with them, subject to applicable transition periods. The orders will expire on December 31, 2013, by which time the IIROC RDI rules are expected to be fully implemented.

Relief from the requirement to provide the relationship disclosure information prescribed by section 14.2(1) of NI 31-103 for mutual fund dealers

(a) MFDA members

The MFDA has adopted new member rules for relationship disclosure information (the MFDA RDI rules). The purpose of the MFDA RDI rules is to set out detailed requirements to assist MFDA member firms to comply with the general principle in section 14.2(1) of NI 31-103. The MFDA RDI rules will be implemented in phases, starting on September 28, 2011 and ending December 3, 2013.

All CSA members except Québec have issued parallel orders that exempt a dealer that is a member of the MFDA from the application of the requirements of section 14.2(1) of NI 31-103 provided it complies with the MFDA RDI rules, subject to applicable transition periods.

The orders will expire on December 31, 2013, by which time the MFDA RDI rules are expected to be fully implemented.

This relief applies to MFDA members notwithstanding their registration in other categories.

(b) Mutual fund dealers registered in Québec

In Québec, the Autorité des marchés financiers issued an order on September 1, 2010 exempting mutual fund dealers in Québec from the requirement, in section 14.2(1) of NI 31-103, to provide relationship disclosure information until the earlier of September 28, 2011 or the coming into effect of new regulations for mutual fund dealers in Québec.

There is currently no equivalent requirement, under the regulations in Québec, relating to relationship disclosure information. This renders the exemption provided in section 9.4(4) of NI 31-103, in respect of the application of section 14.2(2) of NI 31-103, unavailable to mutual fund dealers in Québec.

Beginning on September 28, 2011, the requirement to provide relationship disclosure information, as provided in section 14.2 of NI 31-103, will apply to mutual fund dealers in Québec. However, the Autorité des marchés financiers has issued a new order exempting mutual fund dealers in Québec from the application of the requirements of section 14.2(1) of NI 31-103, but in respect of existing clients only.

This order will expire on December 31, 2013.

This relief applies to mutual fund dealers in Québec notwithstanding their registration in other categories.

We are publishing the orders with this Notice. The orders are also available on websites of CSA members, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.msc.gov.mb.ca
www.gov.ns.ca/nssc
www.nbsc-cvmnb.ca
www.osc.gov.on.ca
www.sfsc.gov.sk.ca

Questions

If you have questions regarding this Notice or the orders please direct them to any of the following:

Lindy Bremner
Senior Legal Counsel, Capital Markets Regulation
British Columbia Securities Commission
Tel: 604-899-6678
Fax: 1-800-373-6393
lbremner@bcsc.bc.ca

Sarah Corrigall-Brown
Senior Legal Counsel, Capital Markets Regulation
British Columbia Securities Commission
Tel: 604-899-6738
1-800-373-6393
scorrigall-brown@bcsc.bc.ca

Navdeep Gill
Legal Counsel, Market Regulation
Alberta Securities Commission
Tel: 403-355-9043
navdeep.gill@asc.ca

Dean Murrison
Deputy Director, Legal and Registration
Saskatchewan Financial Services Commission
Tel: 306-787-5879
dean.murrison@gov.sk.ca

Chris Besko
Legal Counsel, Deputy Director
The Manitoba Securities Commission
Tel: 204-945-2561
Toll Free (Manitoba only): 1-800-655-5244
chris.besko@gov.mb.ca

Robert F. Kohl
Senior Legal Counsel, Compliance and Registrant Regulation
Ontario Securities Commission
Tel: 416-593-8233
rkohl@osc.gov.on.ca

Sophie Jean
Analyste expert en réglementation – pratiques de distribution
Direction des pratiques de distribution et des OAR
Autorité des marchés financiers
Tel: 514-395-0337, ext. 4786
Toll-free: 1-877-525-0337
sophie.jean@lautorite.qc.ca

Gérard Chagnon
Analyste en réglementation
Direction des pratiques de distribution et des OAR
Autorité des marchés financiers
Tel: 514-395-0337, ext. 4815
Toll-free: 1-877-525-0337
gerard.chagnon@lautorite.qc.ca

Jason L. Alcorn
Legal Counsel
New Brunswick Securities Commission
Tel: 506-643-7857
jason.alcorn@nbsc-cvmnb.ca

Katharine Tummon
Superintendent of Securities
Prince Edward Island Securities Office
Tel: 902-368-4542
kptummon@gov.pe.ca

Brian W. Murphy
Deputy Director, Capital Markets
Nova Scotia Securities Commission
Tel: 902-424-4592
murphybw@gov.ns.ca

Craig Whalen
Manager of Licensing, Registration and Compliance
Office of the Superintendent of Securities
Government of Newfoundland and Labrador
Tel: 709-729-5661
cwhalen@gov.nl.ca

Louis Arki, Director, Legal Registries
Department of Justice, Government of Nunavut
Tel: 867-975-6587
larki@gov.nu.ca

Donn MacDougall
Deputy Superintendent, Legal & Enforcement
Office of the Superintendent of Securities
Government of the Northwest Territories
Tel: 867-920-8984
donald.macdougall@gov.nt.ca

Frederik J. Pretorius
Manager Corporate Affairs (C-6)
Dept of Community Services
Government of Yukon
Tel: 867-667-5225
Fred.Pretorius@gov.yk.ca