Embracing Reform

Why registration matters to you and the regulators

COMPLIANCE MATTERS

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The second round of comment letters on the Canadian securities administrators' revised registration reform proposals are now in and we can see that, yet again, the CSA's proposals that will affect all dealers, advisers (portfolio managers) and investment fund managers, continue to strike a nerve.

We know that the CSA are keen to finalize proposed National Instrument 31-103 *Registration Requirements* and the related registration instruments so that the new regime can be in force by March 30, 2009, the publicly targetted effective date of the rule. The key to achieving this aggressive timing will be whether the CSA and the various provincial legislatures not only make realistic decisions to change the proposals in response to comments, but also agree on a sensible and staggered transition to the new rules. The CSA favourably responded to many comments made during the first comment period; we believe they must continue to be responsive to all comments in order to have a hope of effecting long-overdue changes in this important segment of the Canadian securities industry.

There is a lot that is good about the registration reform proposals. Today's regulatory regime is woefully outdated and inconsistent among the provinces. In many cases the regime simply consists of unwritten administrative practices of the various regulators, rather than clear and enforceable rules.

Proposed NI 31-103 will achieve two central objectives – streamlined and nationally uniform categories for registration, with definitive "fit and proper" requirements and conduct rules and nationally uniform rules to govern the overall relationships between registrants and their clients.

We hope that the CSA do not lose sight of these central goals in their pursuit of the ideal revamp. The CSA could heed the advice given in the comment letters:

> Long-overdue changes in this important segment of the Canadian securities industry.

• Bring into force the uniform requirements that we can all agree on. This means establishing uniform categories of registration for dealers and portfolio managers, and the individuals who provide services for those entities. This also means establishing uniform fit and proper requirements [what an entity and individuals must do or have in order to become registered] and conduct rules for those registered [what an entity and its registered individuals must do once registered].

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• Drop all controversial new requirements where there is not uniform agreement, until such time as the industry can find common ground. An extreme variant of this suggestion that many commenters support is to drop the exempt market dealer and investment fund manager categories of registration at this time, in favour of additional consultation and better articulation of the regulatory objectives. Instead, the exempt marketplace would continue to be regulated through prospectus and registration exemptions. Investment fund managers would continue to be subject to regulatory oversight, through the regulatory disclosure review process and compliance audits.

• Recognize the realities of each distribution channel for various securities and modernize the dealer regulatory regime to allow Canadian investors reasonable access to qualified advice. Investment dealers will continue to have the broadest scope in trading and underwriting securities. Mutual fund dealers should be able to trade in any security that has been issued by a "mutual fund" within the definition of that term, as well as trade with accredited investors in any security pursuant to today's prospectus and registration exemptions. The CSA should not purport to restrict dealers from dealing in products that are not securities, such as GICs, PPNs and deposit accounts.

• Reflect the realities of the marketplace and allow portfolio managers to manage their clients' assets more efficiently through packaging advice into pooled funds, so long as those clients are either accredited investors or have discretionary managed accounts with the portfolio manager. Dismantle any regulations that restrict the portfolio managers from conducting their primary objectives, including any requirements for dealer registration.

• Allow individuals providing services to registrants to manage their businesses in more tax-efficient ways, including through personal holding companies. Various securities commissions in Canada have recognized this reality in simple, but effective ways.

• Allow the dealer-SROs to be true self-regulatory organizations and do not require their members to comply with two different regulations – one made by the SROs and one made by the CSA. However, ensure that the SRO-made rules are consistent with each other's and with the CSA's rules.

• Improve better understanding by investors of their "deal" with registrants through appropriate relationship disclosure, but watch the requirements for boiler-plate information, as well as the overall disclosure regime set out by securities regulation. Relationship disclosure must be an integral part of the overall disclosure regime – not simply an additional item overlaid on top of existing disclosure.

• Be clear on transition to the new regime. And be realistic on the timing of compliance with new requirements.

It's clear that the CSA have done a yeoman's service in bringing the proposals for change to their current state. It's also clear that many in the investment industry have spent countless hours reviewing the proposals and writing out their responses. Many individual investors have also attempted to read the proposals and voice their opinions. The CSA will lose a golden opportunity to revamp a critical pillar in the Canadian securities regulatory regime by failing to properly recognize industry and investor comments and letting philosophical differences get in the way of realistic, nationally uniform change. **AER**

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