

## REQUEST FOR COMMENT

### **Notice of proposed amendments to Multilateral Instrument 33-109 - Registration Information, Companion Policy 33-109CP, Multilateral Instrument 31-102 - National Registration Database, and Companion Policy 31-102CP**

#### **Introduction**

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for comment proposed amendments to Multilateral Instrument 33-109 - Registration Information (**MI 33-109**), Companion Policy 33-109CP (**33-109CP**), Multilateral Instrument 31-102 - National Registration Database (**MI 31-102**), and Companion Policy 31-102CP (**31-102CP**).

MI 33-109, 33-109CP, MI 31-102, and 31-102CP are currently in force in all Canadian jurisdictions except for Québec. In Québec, the system has been implemented by the adoption of *Regulation 33-109Q respecting Registration Information* and *Regulation 31-102Q respecting National Registration Database* (collectively, the **Québec Regulations**), which came into force in Québec on January 1, 2005. The Québec Regulations are substantially identical to MI 33-109 and MI 31-102, except as to transition periods. Québec did not adopt 33-109CP and 31-102CP as policy statements.

Québec will adopt the amended MI 33-109 and the amended MI 31-102 as well as the amended 33-109CP. These instruments will be implemented in Québec as regulations and will replace the Québec Regulations.

#### **Substance and purpose of proposed amendments**

##### *Proposed changes to MI 33-109*

Four changes are proposed to be made to MI 33-109. First, references to Québec will be included in the instrument, making it into a national instrument. Second, the term “non-registered individual” will be changed to “permitted individual”. Third, three deadlines for reporting changes to information filed on NRD will be changed. Fourth, firms will now be required to advise the regulator of a change in financial year end and of a change in auditor.

##### *1. Addition of Québec*

Québec joined the National Registration Database on January 1, 2005, and so MI 33-109, 33-109CP, MI 31-102, and 31-102CP must be updated by way of certain technical modifications to reflect that fact. These changes are not substantive, and all operational changes to the NRD to ensure this change takes effect have already occurred. With Québec’s inclusion, MI 33-109 and MI 31-102 will become national instruments.

##### *2. Permitted individual*

A non-registered individual is defined in MI 33-109 as a director, partner, officer, or branch manager of a registered firm if the individual does not trade or advise on behalf of the firm. In Alberta, British Columbia, and Ontario, the definition also includes shareholders controlling 10 per cent or more of the voting securities of the firm.

Securities regulators require information on non-registered individuals because those individuals are the directing minds of registrant firms. The firms are required to provide securities regulators with that information.

Since MI-33-109 and MI 31-102 came into force, staff have fielded questions about why a non-registered individual must submit a Form 33-109F4, leading to confusion. Furthermore, the term has led some applicants to assume incorrectly that information filed by non-registered individuals is not reviewed by the regulator.

As a result, we propose to change the term to “permitted individual”. This term is not similar to any other in use in the financial services industry, and the term carries with it the implication that the application is not automatically granted. This change does not require any operational or functional changes to the NRD system; it requires only that the term be replaced on NRD.

### 3. *Deadlines*

MI 33-109 currently sets out a number of deadlines for registrants to notify the regulator in accordance with MI 31-102 of a change to any information submitted in Form 33-109F4. The deadlines vary with the importance of the information. For example, the deadline to notify the regulator about a termination of an individual is five business days; other less critical information can be submitted later.

The current deadlines are based on the pre-NRD system in which registrants submitted information to the regulator, and the regulator input the changes into its computers. With NRD, registrants bear the responsibility of inputting their own information, and for maintaining records of proof for that information. With this increased load on registrants, they have found that some of the deadlines are too short.

One deadline proposed to be changed, for a change in previous employment, has been lengthened from five business days to 10 business days in consideration of requests from industry for more time. Since this information is not as critical as, say, a termination notice, a longer deadline seems appropriate. Another deadline proposed to be changed would lengthen the amount of time in which a new non-registered individual is required to apply to the regulator from five business days to 20. Industry has requested this change because five business days is an unreasonably short amount of time to prepare all the required information.

Two deadlines, for changes in personal information and in proficiency information, have been changed from the previous maximum deadline of one year to 20 business days. The year-long deadline was so long that it was easy for a firm NRD filer to forget to submit the information.

### 4. *Changes in financial year end and changes of auditor*

Applicants for registration are required to submit information to the regulator about their financial year end and auditor, but they are not currently required to inform the regulator of any changes to that information. Proposed revisions to MI 33-109 will close this gap immediately, requiring registrants to inform the regulator of changes to their financial year end or to their auditor within five business days of the change.

#### *Proposed changes to 33-109CP*

33-109CP will be revised to reflect that MI 33-109 is now a national instrument. In addition, to clarify the responsibilities each firm bears for the information submitted to the regulator, the relevant section of the companion policy will be revised to specify that firms should regularly remind the individuals it sponsors to ensure the truth and correctness of that information.

#### *Proposed changes to MI 31-102*

MI 31-102 will be updated to reflect Québec participation in the NRD.

#### *Proposed changes to 31-102CP*

31-102CP will be revised to reflect that MI 31-102 is now a national instrument.

## Summary of proposed amendments

The proposed amendments are minor housekeeping changes that will:

1. reflect Québec's participation in the National Registration Database;
2. end the confusion over the term "non-registered individual";
3. provide some relief to registrants hamstrung by two deadlines that are too short;
4. ensure the regulator is kept abreast of changes in a registrant's financial year end and its auditor; and
5. clarify the responsibilities each firm bears for the information submitted to the regulator.

### Authority for proposed amendments - Ontario

Paragraph 143(1) 1 of the *Securities Act* (the **Act**) authorizes the Commission to make rules prescribing requirements in respect of applications for registration and the renewal, 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.

Paragraph 143(1) 39 of the Act authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act, the regulations or the rules made thereunder and all documents determined by such regulations or rules to be ancillary to the documents, including applications for registration.

Paragraph 143(1) 44 of the Act authorizes the Commission to make rules varying the application of the Act to require the use of an electronic or computer-based system for the filing, delivery or deposit of documents or information to be filed under the Act, the regulations or rules made thereunder.

Paragraph 143(1) 45 of the Act authorizes the Commission to make rules establishing requirements for and procedures in respect of the use of an electronic or computer-based system for the filing, delivery or deposit of documents or information.

Paragraph 143(1) 46 of the Act authorizes the Commission to make rules prescribing the circumstances in which persons or companies shall be deemed to have signed or certified documents on an electronic or computer-based system for any purpose of the Act.

Paragraph 143(1) 49 of the Act authorizes the Commission to make rules varying the Act to permit or require methods of filing or delivery, to or by the Commission, registrants, and others, of documents, information, notices or other communications required under or governed by Ontario securities law.

### Unpublished materials

In proposing the amendments to MI 33-109, 33-109CP, MI 31-102, and 31-102CP, the Ontario Commission has not relied on any significant unpublished study, report, or other written materials.

## **Alternatives considered**

The Ontario Commission did not consider any alternatives to the proposed amendments to MI 33-109, 33-109CP, MI 31-102, and 31-102CP.

## **Anticipated costs and benefits**

We anticipate that the proposed amendments will reduce the time, costs, and inconvenience of a firm filer associated with confusion over why a non-registered individual has to register, and with deadlines that were too short in certain instances.

## **Comments**

Interested parties are invited to make written submissions about these proposed amendments. Submissions received by August 10, 2006 will be considered. If you are not sending your submissions by e-mail, please include a diskette or CD containing your submission (in Windows format, Word).

Submissions should be addressed to all of the CSA members listed below:

Ontario Securities Commission  
Autorité des marchés financiers  
New Brunswick Securities Commission  
Saskatchewan Financial Services Commission

It is not necessary to send comments separately to all CSA member authorities. Please send them to the following person, who will ensure they are sent to the other CSA members:

c/o John Stevenson  
Secretary to the Commission  
Ontario Securities Commission  
20 Queen Street West, Suite 1903, Box 55  
Toronto, Ontario  
M5H 3S8  
Fax: (416) 593-2318  
e-mail: [jstevenson@osc.gov.on.ca](mailto:jstevenson@osc.gov.on.ca)

Alberta will publish these materials at a later date.

We cannot keep submissions confidential because securities legislation in certain jurisdictions requires that a summary of the written submissions received during the comment period be published.

## **Questions**

Please refer your questions to any of:

Sophie Jean  
Autorité des marchés financiers  
800 square Victoria, 22e étage  
C.P. 246, Tour de la Bourse  
Montréal, Québec H4Z 1G3  
Téléphone: (514) 395-0558, poste 4786  
Télécopieur: (514) 873-2262  
Courriel: [sophie.jean@lautorite.qc.ca](mailto:sophie.jean@lautorite.qc.ca)

David Gilkes  
Ontario Securities Commission  
20 Queen Street West, Suite 1903, Box 55  
Toronto, Ontario M5H 3S8  
Direct: (416) 593-8104  
Fax: (416) 593-8240  
E-mail: [dgilkes@osc.gov.on.ca](mailto:dgilkes@osc.gov.on.ca)

Martha Rafuse  
Ontario Securities Commission  
20 Queen Street West, Suite 1903, Box 55  
Toronto, Ontario M5H 3S8  
Direct: (416) 593-2321  
Fax: (416) 593-8240  
E-mail: [mrafuse@osc.gov.on.ca](mailto:mrafuse@osc.gov.on.ca)

Andrew Nicholson  
New Brunswick Securities Commission  
85 Charlotte Street, Suite 300  
Saint John, New Brunswick E2L 2J2  
Direct: (506) 658-3021  
Fax: (506) 658-3059  
E-mail: [Andrew.Nicholson@nbsec-cvmnb.ca](mailto:Andrew.Nicholson@nbsec-cvmnb.ca)

Dean Murrison  
Saskatchewan Financial Services Commission  
6th Floor, 1919 Saskatchewan Drive  
REGINA SK S4P3V7  
Direct: (306) 787-5879  
Fax: (306) 787-5899  
E-mail: [dmurrison@sfsc.gov.sk.ca](mailto:dmurrison@sfsc.gov.sk.ca)

The text of the proposed amendments follow or can be found elsewhere on a CSA member website.

**May 12, 2006**