

MSC NOTICE 2004-1

Request for Comment

Proposed *National Instrument 31-101 – Requirements under the National Registration System* and proposed *National Policy 31-201 – National Registration System*

Introduction

The Manitoba Securities Commission, in conjunction with the other members of the Canadian Securities Administrators (**CSA**), is publishing for comment, proposed *National Instrument 31-101 – Requirements under the National Registration System* (**National Instrument**) as well as proposed *National Policy 31-201 – National Registration System* (**National Policy Statement**).

Substance and Purpose

The National Registration System (**NRS**) proposes that a firm filer or individual filer may register in any Canadian jurisdiction solely under the rules of its principal regulator. The principal regulator for a firm filer is determined by an analysis of connecting factors as set out in the National Policy Statement. For individual filers, the principal regulator is the regulator for the jurisdiction in which the individual filer's working office is located. The non-principal regulators are the regulators in the other jurisdictions where the firm or individual wishes to be registered.

The principal regulator will review the application for registration in accordance with its securities legislation requirements regarding suitability for registration (also known as fit and proper requirements). The non-principal regulators will rely on the principal regulator's review to accept or refuse the application. When the non-principal regulators opt in to the principal regulator's decision on registration, the filers will be exempt from the fit and proper requirements of the non-principal regulator. The filer will only have to satisfy the fit and proper requirements of the principal regulator.

The applicable conduct rules will be those of the jurisdiction in which the client is located. Guidance as to which rules will be considered conduct rules is set out in the National Policy. In the cases of registrants who are members of self-regulatory organizations (**SRO**) such as the Investment Dealers Association of Canada, the Mutual Fund Dealers Association, or the Montréal Exchange, the SRO requirements will likely be the applicable conduct requirements.

Summary of National Instrument and National Policy Statement

The NRS is an optional system which can only be used by registrants in the following three registration categories:

- investment dealers;
- mutual fund dealers;
- unrestricted advisers¹.

¹ In Ontario this refers to firms registered in the categories of investment counsel and/or portfolio managers.

The National Instrument sets out the criteria for who is eligible to use the NRS.² Individual filers may only use the NRS when the sponsoring firm is eligible and has elected to use the NRS. Individual filers must reside in Canada, and firm filers must have an office located in Canada.

The National Instrument provides for an exemption from fit and proper requirements in the provinces and territories, other than the principal regulator, where an investment dealer, an unrestricted adviser, a mutual fund dealer as well as their officers and representatives apply for registration, provided they are registered in the jurisdiction of the principal regulator.³

A firm or individual filer can use NRS for initial registration in multiple jurisdictions or to add a jurisdiction if they are already registered in a jurisdiction.

Operation of NRS

- When a firm files an application for initial registration in more than one jurisdiction or adds a jurisdiction, it only has to file its materials in the appropriate format with the principal regulator.
- An individual filer files his or her application for registration or approval in the jurisdiction in which his working office is located. The application for registration is made through the National Registration Database (**NRD**).
- The principal regulator alone reviews applications for registration for all jurisdictions chosen by the filer, based on the principal regulator's fit and proper requirements.
- The principal regulator provides a recommendation regarding the granting of registration to the non-principal regulators.
- The non-principal regulators have five days from the receipt of the recommendation to opt in or opt out of the recommended decision.
- If the recommendation is refused, the application for registration is handled directly by the non-principal regulator for that jurisdiction⁷.
- Once registered, the firm or individual filer has only to abide by the continuing fit and proper requirements (including notice filings and approvals) of the principal regulator.⁸

² [Section 2.2 NI 31-101

³ Section 3.1 NI 31-101

⁴ [Section 2.2 NI 31-101

⁶ At the current time all jurisdictions except for Quebec are participants in NRD. The Commission des valeurs du Quebec is planning to become a participant in NRD.. In the mean time, accommodations to the process may need to be made until it becomes a full participant.

⁷ It is expected that this system will operate in a similar fashion to the MRRS for Prospectuses and that opt outs will be very rare.

⁸ section 3.1 NI 31-101

Role of SROs

SROs shall be considered principal regulators for the purpose of the application of the instrument, when an application is made in a jurisdiction where a delegation of authority to the SRO has been granted.

Changes to NRD

Staff are proposing to evaluate three key changes to be made to NRD for efficient implementation and application of the NRS system. These are: selection of principal regulator, opt in/opt out function, and unique designation of NRS submissions. In addition, Quebec is currently developing plans to participate in NRD .

Selection of Principal Regulator

Regulators need the ability to override the NRD choice of lead regulator and select the principal regulator which will allow submissions to non-principal jurisdictions to also be assigned to the principal regulator. When a new jurisdiction is added, the principal regulator will receive the submission and the new jurisdiction will receive the submission with an "opt in" or "opt out" button rather than approval. The non-principal regulator will do a detrimental information check on the applicant and provided that it is clear, will opt in to lead regulator's decision to grant registration. NRD needs to be changed to allow the selection of the principal regulator and to have all applications assigned to it as well as the non-principal regulators.

Opt In/Opt Out Button

The NRS is based on Mutual Reliance and the ability to opt in or opt out is key to the system. The current design of NRD does not allow for this selection. However, NRD does allow for lead jurisdictions to approve notices while non-lead jurisdictions just acknowledge. Similar functionality will be needed for multi-jurisdictional applications in which the principal regulator will have a button to approve applications and the non-principal regulators will have buttons to opt in or opt out of the decision to grant registration. NRD needs to be changed to have applications assigned to the principal regulator with the ability to approve while the non-principal regulators will either select opt in or opt out.

Identification of NRS Applications

The NRS will require the principal regulator to coordinate opting in or opting out of the recommendation. There will be turnaround time requirements and to meet these times NRS applications will have to be identified in some unique fashion, for example, using a different colour.

Alternatives Considered

Consideration was given to developing a system without a National Instrument or National Policy Statement. The alternative allowed firms and individuals who are already registered to apply to another jurisdiction on the basis that such firm or individual was already registered. The non-principal jurisdictions would have to grant an exemption from their requirements either through a blanket ruling or on a case by case application. Since not every jurisdiction has the option of using a blanket ruling, it was determined that it would be more efficient and more conducive to consistency among regulators to have a National Instrument and National Policy Statement. Staff also believes that applicants would prefer to deal with only one regulator (the principal regulator) than to deal with many individual regulators.

Anticipated Costs and Benefits

The CSA expects the NRS to reduce the time spent by applicants to prepare and file forms because applicants will only have to file one set of documents with one regulator. In addition, there will be a reduction in compliance costs due to the fact that registrants will only have to meet one set of fit and proper requirements. There should also be a reduction in processing time by the regulators. Due to the introduction of the NRD system and additional processes during the initial phase of implementation, useful data on turnaround times is not available at this time. Instead the CSA is proposing to do an impact analysis upon implementation of the NRS.

NRD data will be gathered for a period of six months before and after the implementation of the NRS. The actual elapsed processing times will be observed and form the basis of time savings calculations for regulators from pre-implementation to post-implementation. The time savings will be converted to cost savings (benefit estimates) for the industry. We will provide a "report card" on the impact of NRS as part of the analysis.

Authority for the Instrument - Manitoba

It is expected that following a review of all comments received, and subject to Commission approval, the National Instrument will be enacted as a rule in Manitoba pursuant to section 149.1(1) *The Securities Act*. The authority for the rule is contained in section 149(j) of the Act.

The authority to issue the Policy is contained in section 149.5(1) *The Securities Act*.

Comments

Anyone interested may submit comments on the National Instrument and National Policy Statement.

Please send your comments in writing no later than March 30, 2004. If you do not send your comments by e-mail, a diskette or CD containing the submissions (in Windows format, Word) should also be forwarded.

Address your submission to all of the CSA member commissions below:

Commission des valeurs mobilières du Québec
Ontario Securities Commission
Alberta Securities Commission
British Columbia Securities Commission

It is not necessary to send your comments separately to all CSA member authorities. Please send them to the following people. CSA staff will ensure they are sent to the other CSA members.

c/o John Stevenson, Secretary
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Suite 1900, Box 55
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We are unable to keep comments confidential as securities legislation of certain provinces requires the publication of a summary of the written comments received during the consultation period.

Questions

Should you have any questions, please contact the following:

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