

Registration package gets new tweaks

By DONALEE MOULTON

Last year, securities commissions in Canada — with the notable exception of Ontario — introduced a new policy to level the playing field in a key area: registration. Now that 68-page policy, known as National Instrument 31-103, *Registration Requirements and Exemptions*, has been amended.

“Essentially, 31-103 sought to end up with a coherent national system for regulating securities dealers, fund managers, and portfolio managers,” said Ross McKee, a partner in the Securities Group with the law firm Blake, Cassels & Graydon LLP in Toronto. “It sought to impose a standard trigger for registration.”

And to a large extent it did just that, he added. “It was somewhat successful. The commissions continue to interpret the rules differently, but it at least gave us a common groundwork.”

The regulations also helped accountants, noted Sean Sadler, a partner in the securities regulation and investment products group with the law firm McCarthy Tétrault LLP in its Toronto office. “The requirements are now uniform across the country. It’s much easier for staff and professional suppliers to work in this area.”

“Before there were local dif-

ferences,” Patrick Fitzgerald, a partner with the law firm Cox & Palmer in Halifax, pointed out. “National Instrument 31-103 removed some of those.”

However, he added, “it’s still a work in progress.”

As the recent changes attest. “A year down the road this is fine-tuning and housekeeping,” said McKee. “There is very little substance here. There is little that is brand new.”

Understandably, he added. “The pace of reform in Canada is such that it is not possible to make substantive changes each year.”

The changes that were made, noted Fitzgerald, “are intended to further refine and clarify the policy ... The goal is to make it easier for registrants to apply.”

Some of the changes, captured in a 582-page supplemental document, include new obligations for financial statements and capital requirements. “Financial statements are required to be filed. In some cases, that is new for registrants,” noted Sadler.

“Those financial statements are not made public,” he added. “Investors will not be able to pore through the financial statements. We expect the regulator will review these from time to time.”

The new rules require all registered firms to file audited annual



FITZGERALD

financial statements (and additional paperwork) within three months of their fiscal year end. For investment fund managers and dealers, there’s more. They must file a quarterly, albeit unaudited, financial statement. Fund managers must explain any net asset value adjustments made during the year or the quarter. And effective this year, all firms registered in Canada must use IFRS to prepare their financial statements.

Requirements for excess working capital are now clearly in place as well. “The new rules contemplate that a minimum working

capital be maintained,” said Sadler, who is co-editor of *Annotated Ontario Securities Legislation*.

Specifically, registered firms are required to ensure that excess working capital does not dip below zero for two consecutive days. If at any time the working capital dips below this level, it must be reported right away to the regulator.

A form has been provided for calculations, noted McKee, a past member of the Ontario Securities Commission’s continuous disclosure advisory committee. “The form will be used under IFRS as well as GAAP.”

Technical adjustments to the form include adding a definition of fair value for the purpose of valuing securities and new margin rates for mortgages.

In most provinces, exempt market dealers, a new category rolled out with the original requirements in 2009, will also experience some changes. (Newfoundland and Labrador and Ontario had similar requirements in place already.) “This category requires registration even if there is no need to file a prospectus,” said Fitzgerald. “Now you can only use people who are registered to raise money for companies. This helps protect investors.”

The amendments also create a new category of professional: investment fund manager. “This is now a regulated function,” said Sadler. “It’s such a critical and fundamental component.”

The amendments are not creating waves, he added. “Nothing in here changes (registrants’) world in a material way, but it is another layer of regulation. The cost of doing business increases with every layer of regulation.”

The changes also raise the issue, yet again, of a national securities regulator or at the very least a uniform system across the country. “The (commissioners) say there is a commitment to a seamless registration process. At the same time, no one is willing to give up their jurisdiction,” noted McKee, who was part of the team retained by the Ontario Securities Commission to reformulate its policies, orders, and regulations under the *Ontario Securities Act*.

Still, he pointed out, “They have devoted significant resources to this rule, which is a good sign.”

And there is no time like the present for implementing changes, said Fitzgerald. “The concept of a national regulator still appears to be in the distance. Securities regulators still have to move forward on the basis of improving what we have now.”