

# Le point sur la réglementation : Règlement 31-103 sur la réforme de l'inscription et autres questions

Le groupe Réglementation des valeurs mobilières  
Lundi 13 septembre 2010 - Montréal



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**Conférencière invitée :**  
**Sophie Jean**  
Conseillère en réglementation  
Autorité des  
Marchés Financiers



**AUTORITÉ  
DES MARCHÉS  
FINANCIERS**

# **Règlement 31-103 sur les obligations et dispenses d'inscription**

Présentation de Sophie Jean  
13 septembre 2010



# 13 septembre 2010



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# Règlement 31-103

Expiration le 28 septembre 2010 de  
certaines périodes de transition

- Le formulaire 33-109F6
- Inscription à titre de courtier sur le marché dispensé
- Inscription à titre de gestionnaire de fonds d'investissement
- Respect des exigences de compétence

# Consultation du 25 juin 2010



- ▣ prend fin le 30 septembre 2010
- ▣ Plusieurs zones de modification
- ▣ Une consultation particulière sur les relevés aux clients

## □ Les sociétés

- Codification des dispenses du 26 février 2010
- Traitement des plaintes: indications dans l'IG 31-103
- Gestionnaires de fonds d'investissement: obligation de transmettre les avis d'exécution et les relevés de compte aux investisseurs qui traitent directement avec eux
- IFRS
- Nouvelles dispenses aux membres d'organismes d'autoréglementation (OAR)

## ■ Les représentants

- Codification de l'obligation de connaître les titres transigés avec les clients
- Codification des dispenses du 26 février 2010
- Modifications au régime de la durée de validité des examens (article 3.3)

# HST Update – Investment Fund Sector

**Paul Casuccio**  
**Fasken Martineau**

# Overview

- Changes to the Definition of “Financial Service”
  - GST/HST Notice 250 – An Update
  - Enactment of Bill C-9
- New HST Rules for Investment Funds
  - The Basics
  - The Look Through Rules
  - Recovering GST/HST from the Investors
  - Multiple Series
  - The Elections

# “Financial Service” Definition: The History

- *The Queen v Canadian Medical Protective Association*
  - Federal Court of Appeal - April 2009
- Allowed for GST exemption of certain asset management services
- No appeal to Supreme Court, which means...

# “Financial Service” Definition: The History

- Proposed legislative amendments – December 15, 2009
  - Explicit exclusion of “asset management services” from definition of exempt “financial services”
  - Retroactive legislation
  - Simply a concept; no particular statutory language proposed
  - “No expansion of taxable supplies”
- GST/HST Notice 250 – Draft #1 (Feb 2010)
  - Released prior to any statutory language proposal
  - The “Trailer Fee Fiasco”
  - The retraction

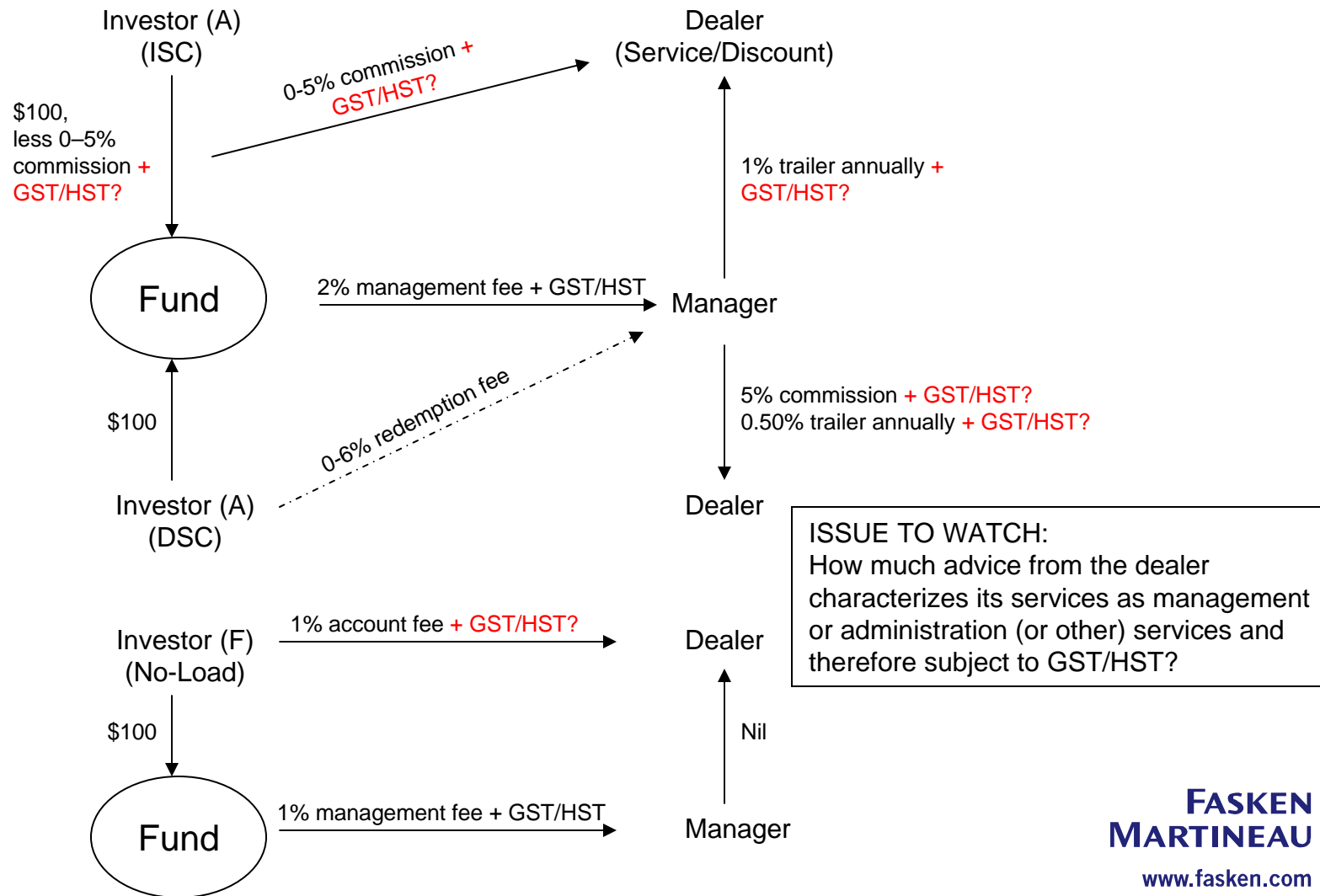
# “Financial Service” Definition: The History

- Budget – March 4, 2010
  - Statutory language proposed to explicitly carve “asset management services” out of the definition of exempt “financial services”
    - managing or administering the assets or liabilities, irrespective of the level of discretionary authority of the particular person who manages some or all of the assets or liabilities;
    - providing research, analysis, advice or reports in respect of the assets or liabilities;
    - determining which assets or liabilities are to be acquired or disposed of; or
    - acting to realize performance targets or other objectives regarding the assets or liabilities.

# “Financial Service” Definition: The New Law and Policy

- GST/HST Notice 250 – Draft #2 (June 2010)
  - Example #1 – Discretionary Investment Manager
    - Individual client
    - Taxable - NOT an exempt financial service
  - Example #2 – Discretionary Portfolio Manager
    - Pension Fund client
    - Taxable - NOT an exempt financial service
  - Example #3 – Full Service Broker
    - Individual client, non-discretionary account
    - Exempt – “arranging for” the execution of trades
  - Example #4 – Mutual Fund Salesperson
    - Works for mutual fund manager
    - Exempt – “arranging for” exempt financial services
  - The ongoing issue re: tax status of trailer fees
- Enactment of Bill C-9 – July 12, 2010

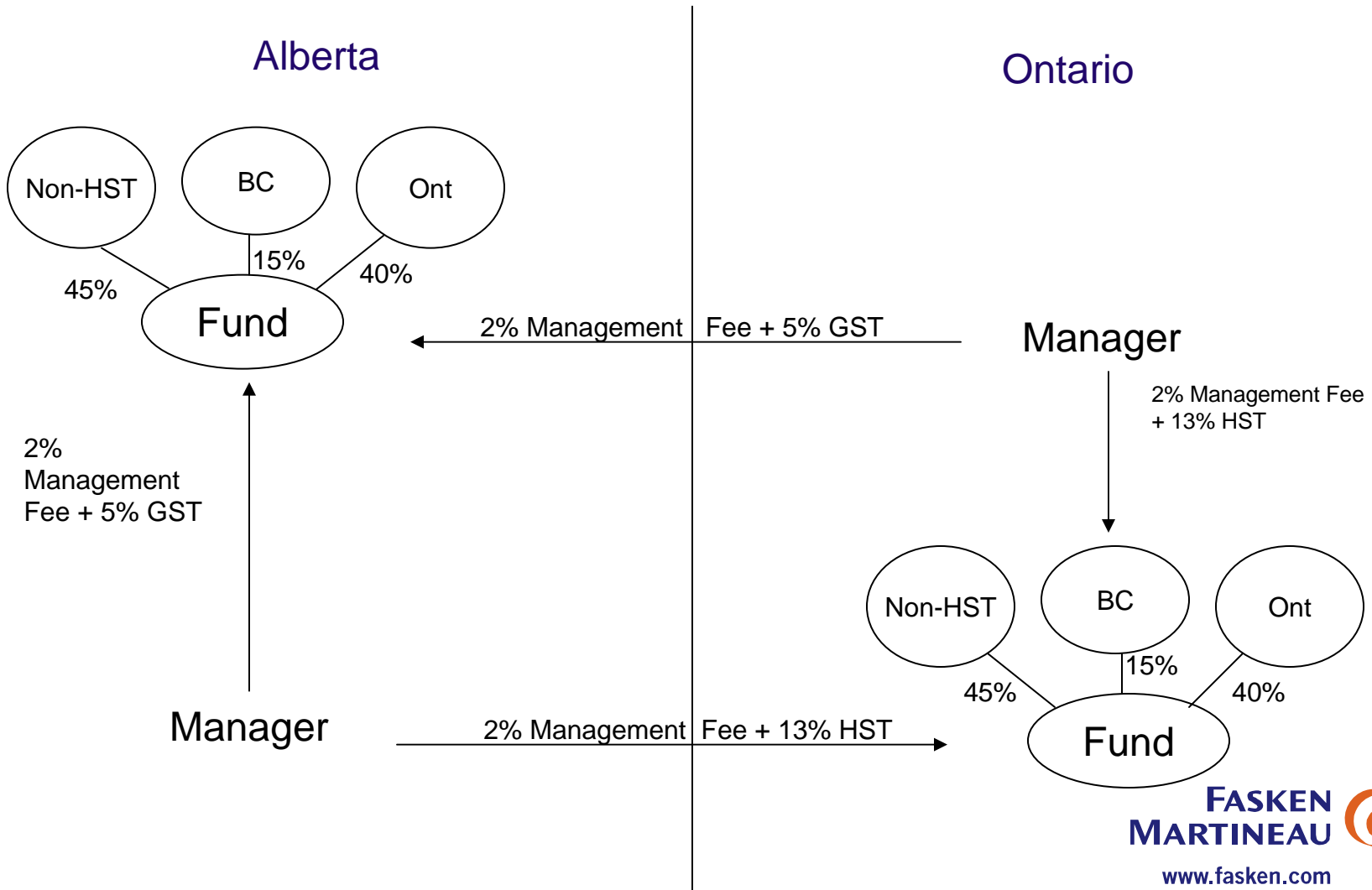
# Current Application of GST/HST



# The HST and Investment Funds: The Basics

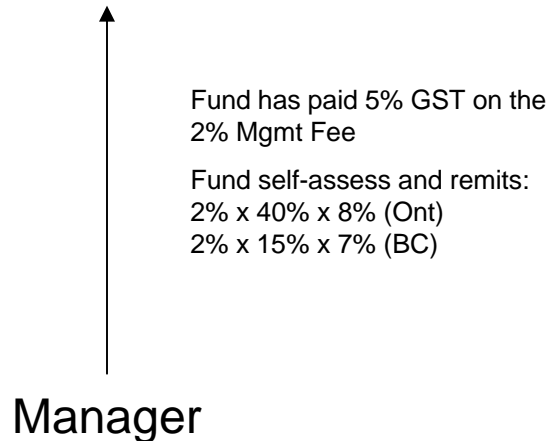
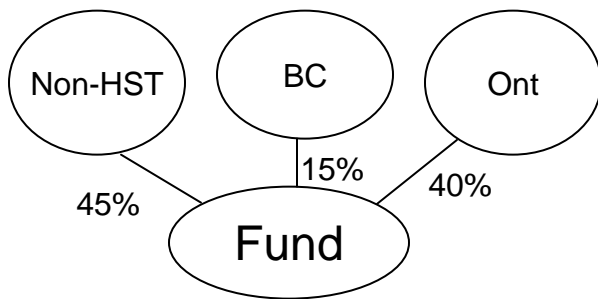
- Investment Funds will continue to pay GST/HST on its taxable expenses
  - Management fees etc.
- Rate of GST/HST to be charged to the Funds will be determined based on the new place of supply rules
  - Generally, the location of the recipient rather than the location of the supplier
- However, most Investment Funds are now required to reconcile, on an annual basis, the GST/HST payable by it on the basis of the location of its investors.
- Simply relocating outside of the HST zone will not decrease GST/HST liability of a Fund

# The HST and Investment Funds: The Basics



# The HST and Investment Funds: The Basics

## Alberta

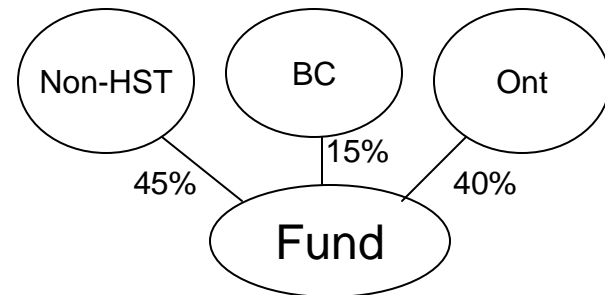


## Ontario

### Manager

Fund has paid 13% HST on the 2% Mgmt Fee

Fund claims refund for:  
2% x 45% x 8% (non-HST)  
2% x 15% x 1% (BC)



# The HST and Investment Funds: The Look Through Rules

- Where a fund has an institutional investor (e.g. fund-on-fund), it is generally required to look through that institution to the location of its investors.
- Institutional investors will have a legislated requirement to provide the information in a timely and accurate manner
  - Enforced by a series of fines
- Exception for “small” investment plans
  - Any institutional investor with less than \$10 million invested will not have to provide details of the residency of its investors
    - EXCEPTION – all mutual fund trusts, mutual fund corporations, seg funds, unit trusts and mortgage investment corporations must always provide such residency details

# The HST and Investment Funds: Recovering GST/HST from the Investors

- Although the net GST/HST payable by a fund is calculated by reference to the location of its investors, the actual GST/HST liability belongs to the fund
- Accordingly, the fund is responsible for paying the full amount of GST/HST, and in the ordinary course, this amount would be absorbed by all of the investors on a pro-rata basis as the additional HST expense would decrease the NAV of the fund
- This will naturally result in an “overpayment” of HST by those investors outside the HST zone, and an “underpayment” of HST by those investors located inside the HST zone.
  - Of course, not technically an over or under “payment”, as the amount is payable by the fund

# The HST and Investment Funds: Recovering GST/HST from the Investors

- Many fund companies are concerned that their investors located outside of the HST zone will be upset by the increase in the fund's expenses that are attributable to the location of other investors
- Various methods being discussed in the industry for rebating or otherwise making investors outside the HST zone whole
- The CRA has generally not commented on these as they fall outside of the tax scheme and most such solutions would not be subject to GST/HST in their own right
  - e.g. issuing additional units of a fund to Alberta investors would be a GST/HST exempt activity
- One of the most talked-about solutions is the use of multiple series of a fund

# The HST and Investment Funds: Multiple Series

- General Concept
  - Different series of a fund for each province, or for HST vs non-HST jurisdictions
  - Residents of a province invest only in their province's series
  - Annual GST/HST calculation still generally required at the series level
    - But, MERs can be varied between the series to result in a more accurate allocation of tax amongst investors
  - It would be possible to eliminate the annual GST/HST allocation requirement by creating series or funds that are not eligible for sale outside the particular jurisdiction

# The HST and Investment Funds: Multiple Series

- Issues
  - Administrative costs
  - Potentially massive influx of new series of funds across the industry
  - Potential criticism as a result of treating investors differently – contrary to the philosophy of a pooled approach to investing
  - Fiduciary duty to investors?
- Present Situation
  - Most funds are not moving ahead yet with this model
  - Will likely require buy-in of a number of funds before mass acceptance because of increased costs and admin burden

# The HST and Investment Funds: The Elections

- Three new GST/HST elections available to funds – designed to assist with the new requirements
- **Reporting Entity Election**
  - Allows the fund manager to file the GST/HST return of the fund, pay any amount owing or claim any refund
  - Absent the election, the trustee would be required to do these tasks
    - No benefit where the same entity acts as manager and trustee
- **Consolidated Filing Election**
  - Entitles fund manager to file a single consolidated GST/HST return for all funds that it has made the Reporting Entity Election with

# The HST and Investment Funds: The Elections

- **Consolidated Filing Election (con't)**
  - CRA has discretion to allow fund manager to file a number of consolidated returns for various groups of funds
  - Fund manager would still be required to calculate the annual reconciled HST liability for each series and fund, and keep detailed records of such calculations, but would only have to file one return
- **Tax Transfer Election**
  - Allows for the fund manager to effectively account for the fund's HST liability on a more frequent basis, so as to benefit the fund's cash flow position
    - Ordinarily the fund must wait until the end of the year to file its special GST/HST reconciliation and recover any portion of the HST that was overpaid

# The HST and Investment Funds: The Elections

- **Tax Transfer Election**

- Where this election is made, the fund manager can generally credit such “overpaid” amounts of HST to the fund and simply claim such amounts on its own GST/HST return for the period
  - Fund managers will generally be filing more frequently, and often monthly, so such HST is effectively received back from the government much sooner than it would otherwise be
- The fund manager could also choose to remit additional amounts to the government on account of “underpayments” of HST (e.g. Alberta funds paying 5% on its fees) so as to avoid a huge tax liability at the end of the year.

# The HST and Investment Funds: The Elections

- **Tax Transfer Election**

- Does not appear to be mandatory; fund manager may be able to choose when to account for the fund's over or under payments of HST
- Although this Tax Transfer Election is technically available in circumstances where the fund manager and the fund have not made the Reporting Entity Election, there are very strict restrictions as to the application of the Tax Transfer Election
  - The Tax Transfer Election is really designed for circumstances where the Reporting Entity Election has been made

# Questions?

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# R 81-102 sur les organismes de placements collectifs – mise à jour réglementaire

Pierre-Yves Châtillon  
13 septembre 2010

# R 81-102 – Mise à jour réglementaire

## Objet des changements

- Actualisation de la réglementation des OPCs classiques - autres fonds d'investissement (OPC cotés, fonds d'investissement à capital fixe)
- Phase 1 – mise à niveau générale de R 81-102
  - Codification de dispenses discrétionnaires
- Phase 2 – considération de problèmes d'efficience des marchés entre les différents régimes de fonds et les produits de placement concurrents
  - modification de R 81-102 afin de traiter ces questions?

Ceci est un avis de consultation pour la Phase 1 se termine le 30 septembre 2010

## OPCs cotés

- Marché primaire – courtiers désignés / marché secondaire – investisseurs du public

## OPCs cotés à placement permanent

- Achats et ventes – espèces et valeurs
- Rachats – pour permettre aux porteurs de racheter des petits lots de titres au cours de clôture boursier
- Minimiser les besoins de liquidité de l'OPC coté

## OPC Cotés non à placement permanent

- Emprunts pour financer l'acquisition du portefeuille avant le PAPE
- Remboursement des frais de constitution
- Prix de rachat aux petits investisseurs au cours boursier aux dates spécifiées au cours boursier qui est moindre que la valeur liquidative

## Fonds cotés à portefeuille fixe

- Dispense de concentration

# Fonds de Fonds

- « Parts indicielles » inclues les parts indicielles au Royaume-Uni
- Fonds de fonds qui a cessé ses placements
- Clarification des restrictions en matière de concentration et de contrôle
- Fonds « clones » - structures de fonds à plusieurs niveaux
  - Limites
  - Suspension des rachats
  - Frais de courtage

# Ventes à découvert

- Codification de dispenses discrétionnaires
- Plafonds
  - 20% de la valeur liquidative sur les activités de ventes à découvert
  - 5% de la valeur liquidative pour l'exposition aux émetteurs des titres vendus à découvert
  - 50% de couverture en espèces
  - Pas de stratégie acheteur/vendeur
- Agent prêteur
- Divulgateion – Avis et Prospectus

## Dérivés

- Couverture en espèces
- Limitation de durée pour les dérivés à but de couverture et autre que de couverture

## OPC marché monétaire – restrictions de placement

- Fonds de fonds si qualifiés selon l'article 2.5
- Certaines stratégies
- Exigences de liquidité
- Durée des titres en portefeuille

## Courtiers en épargne collective

- Restrictions à la confusion des fonds allégés
- Dispense quant au paiement des intérêts et à leurs répartitions / mais règles des OAR
- Dispense des rapports de conformité par les membres de l'ACCFM et les CFI du Québec / mais règles de l'ACCFM

## Notes des OPC

- Nouveaux organismes de notation d'OPC
- Communications de ventes

# Modification de rédaction

- Législation fiscale
- Changement chez les OARs

**Fin**









# BIOGRAPHIES



## Lata Casciano

*Partner*

### Vancouver

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#### Areas of Practice

Securities and Mergers & Acquisitions

Mining - Global Mining

Life Sciences

Investment Products & Wealth Management

Cross-Border and International Transactions

Corporate Governance

#### Education

B Comm,  
University of British Columbia,  
1982

LLB,  
University of British Columbia,  
1986

#### Year of Call

Ontario, 1989

British Columbia, 1987

Lata Casciano, partner, chairs the Securities and Mergers & Acquisitions Group in Vancouver and is a member of the Steering Committee for the National Securities and Mergers & Acquisitions Group.

Lata has tremendous securities expertise. From 1993 to 1997, Lata worked for the British Columbia Securities Commission ("BCSC") as Senior Legal Counsel and Policy Advisor in the Policy and Legislation Division, and from 1989 to 1992 she worked for the Ontario Securities Commission ("OSC") as Solicitor, initially in the Legal Adviser's Office and then in the Corporate Finance Branch. While at the Commissions, Lata developed legislation and policy related to securities regulations, primarily in relation to corporate finance matters, including derivatives, real estate securities and mortgage syndicates. She spearheaded the new prospectus disclosure system for mutual funds and participated in the development of the new national rules on mutual funds, commodity pools and mutual fund sales practices, all for the Commissions. Lata also represented the Commissions on numerous committees, including the CSA Mutual Fund Committee, the CSA Task Force on Civil Remedies and Integrated Disclosure System, the CSA National Escrow Committee and the CSA National Policy Statement 41 – Shareholder Communication Committee.

These opportunities, challenges and contributions have greatly enhanced Lata's current law practice. Hers encompasses all aspects of securities, mergers and acquisitions, and investment funds. She has acted as issuer's counsel and underwriters' counsel in a variety of domestic and cross-border public and private financings, and mergers and acquisitions including takeover bids. She regularly advises clients on ongoing compliance matters, including ongoing disclosure requirements and corporate governance matters as well as applications for relief from regulatory requirements.

#### Representative Experience

- *Eldorado Gold closes acquisition of Sino Gold, creating \$7.7 billion market cap company*  
Advised Eldorado Gold Corporation
- *Great Basin Gold closes \$126.5 million bought deal public offering of convertible debentures*  
Advised the syndicate of underwriters led by RBC Capital Markets
- *Pelangio Exploration closes bought deal private placement*  
Advised Pelangio Exploration Inc.
- *Eldorado Gold acquires stake in Sino Gold*  
Advised Eldorado Gold Corporation
- *First Quantum Minerals completes \$345 million overnight marketed public offering*  
Advised First Quantum Minerals Ltd.
- *Great Basin Gold completes \$149.5 million equity financing*  
Advised the underwriters led by BMO Capital Markets and RBC Capital Markets
- *Pelangio completes plan of arrangement; renamed PDX Resources*  
Advised Pelangio Mines Inc.

- *Skye Resources and HudBay Minerals complete \$460 million business combination*  
Advised Skye Resources Inc.
- *Sonus Pharmaceuticals and OncoGenex Technologies complete business combination*  
Advised OncoGenex Pharmaceuticals, Inc.
- *Pan African Mining Corp. acquired by Asia Thai Mining in \$157 million deal*  
Advised Pan African Mining Corp.
- *GLG Life Tech Corporation signs strategic alliance and multi-decade supply agreement with leading multi-national agribusiness corporation for natural zero-calorie sweetener*  
Advised GLG Life Tech Corporation
- *Robert Bosch GmbH acquires Extreme CCTV*  
Advised Extreme CCTV Inc.
- *Mineral Securities completes \$39.6 million acquisition of common shares of Platmin*  
Advised Mineral Securities Limited
- *International Automotive Components completes Collins & Aikman soft trim acquisition*  
Advised International Automotive Components Group North America
- *sxr Uranium One and UrAsia Energy complete US\$5 billion business combination*  
Advised sxr Uranium One Inc.
- *Great Basin Gold completes \$149.5 million financing*  
Advised the underwriting syndicate led by BMO Capital Markets
- *Pelangio Mines completes sale of Detour Lake Property*  
Advised Pelangio Mines Inc. in its sale of Detour Lake Property to Detour Gold Corporation.
- *Gemcom acquires Surpac Minex Group for \$26 million*  
Advised Gemcom Software International Inc.
- *Eldorado Gold completes \$186 million offering*  
Advised Eldorado Gold Corporation
- *International Royalty completes offering and acquires Voisey's Bay Royalty*  
Advised International Royalty Corp.
- *Doman Industries completes restructuring*  
Advised Doman Industries Ltd. and Western Forest Products
- *Ivanhoe Mines completes \$150 million bought deal offering*  
Advised underwriting syndicate including HSBC Securities (Canada), GMP Securities, CIBC World Markets and UBS Securities Canada
- *Eldorado Gold completes \$46 million bought deal financing*  
Advised Eldorado Gold Corporation
- *MacDonald, Dettwiler completes \$135 million share distribution*  
Advised the underwriting syndicate led by RBC Dominion Securities Inc.
- *MDA Holdings Corporation provides \$36.4 million secondary offering of common shares of MacDonald, Dettwiler and Associates*  
Advised the underwriting syndicate led by Scotia Capital Inc.
- *Diebold acquires Global Election Systems*  
Advised Diebold, Incorporated
- *DeBeers successful in its unsolicited take-over bid of Winspear Diamonds Inc.*  
Advised De Beers Canada Holdings Ltd.

- *Pope & Talbot Inc. successful in its unsolicited takeover bid of Harmac Pulp Inc.*  
Advised Pope & Talbot Inc.
- *Represented the general partner of a flow-through share oil and gas limited partnership, as lead counsel, in connection with its initial prospectus offering of limited partnership units.*
- *AnorMED completes public offerings totalling more than \$100 million*  
Advised AnorMED Inc.
- *Represented the manager of a managed futures fund as lead counsel in connection with the fund's initial prospectus offering of trust units and renewal of its prospectus, and in obtaining the regulatory relief necessary for the fund's operations.*
- *Simon Fraser University completes a \$150 million private placement of unsecured debentures*  
Represented Simon Fraser University
- *Advisor to The Investment Funds Institute of Canada in connection with the collapse of Vancouver-based securities dealer*  
Advised The Investment Funds Institute of Canada
- *Advisor to the Mortgage Brokers Association of British Columbia in connection with proposed legislative amendments to the Mortgage Brokers Act*  
Advised the Mortgage Brokers Association of British Columbia
- *Advised a dealer in connection with a private placement of a novel offering of derivative securities*  
Advised a dealer
- *Consultant to British Columbia Securities Commission in connection with new regulations governing mutual fund disclosure and mutual fund sales practices.*  
Consultant to British Columbia Securities Commission
- *Counsel to a shareholder of a target company in connection with its successful application to the BCSC for orders restraining an illegal takeover bid*  
Advised a shareholder of a target company
- *GMP Securities Ltd. completes two private placements of special warrants*  
Advised GMP Securities Ltd.
- *RBC Dominion Securities Inc. completes \$84 million IPO of common shares of MacDonald, Dettwiler and Associates Ltd.*  
Represented RBC Dominion Securities Inc.
- *Represented the general partner of a flow-through share oil and gas limited partnership, as lead counsel, in connection with a private placement of limited partnership units.*
- *Represented the British Columbia Securities Commission and the Ontario Securities Commission on numerous committees of the CSA*  
Represented the British Columbia Securities Commission (BCSC) and the Ontario Securities Commission (OSC)
- *Represented an international dealer, as lead counsel, in connection with a private placement of Class A and B Preferred Shares of a local biotechnology company*

## **Presentations**

- Regulatory Update - NI 31-103 Registration Reform and Other Matters, Securities Regulatory Compliance Group Seminar, September 20, 2010
- Regulatory Update - NI 31-103 Registration Reform and Other Matters, Securities Regulatory Compliance Group Seminar, September 20, 2010

- NI 31-103 Registration Reform - Regulatory Update, Investment Products and Wealth Management Group Seminar, March 5, 2010
- Mutual Fund Dealers, NI 31-103 Registration Requirements Seminar Series, November 5, 2009
- Investment Dealers, NI 31-103 Registration Requirements Seminar Series, October 29, 2009
- Portfolio Managers, NI 31-103 Registration Requirements Seminar Series, October 22, 2009
- Investment Fund Managers, NI 31-103 Registration Requirements Seminar Series, October 15, 2009
- Exempt Market Dealers, NI 31-103 Registration Requirements Seminar Series, October 6, 2009
- Understanding National Instrument 31-103 Registration Requirements, Roundtable discussion with the BCSC (British Columbia Securities Commission), April 24, 2008
- Ontario Civil Liability Regime for Secondary Market Disclosure Round-Up CNQ, January 5, 2006
- Corporate Governance Update, Corporate Counsel and Business Law Sections, Canadian Bar Associations (BC Branch), January 2004
- Understanding New Liabilities Related to Mining Disclosure, The Conference Board of Canada, New Disclosure Rules for Mining Companies, December 2002
- Corporate Governance Compliance, CBA Corporate Counsel and Business Law Sections, November 2002
- eFinancing Course, From IP Address to IPO, E-business, L.L.M. E-Business Law Program, January - March 2002
- Legal Role in Financial Risk Management - Securities Regulatory Practice and Pitfalls, CCCA Annual Meeting 2001, August 2001
- All You Need to Know About Employee Stock Incentives, HRMA / WorldatWork Conference 2001, June, 2001
- Trading Securities on the Internet - Potential Liabilities for Issuers, Insight, Issuing and Trading Securities on the Internet, October 1999
- The Vantage Bankruptcy: A Mutual Fund Industry Perspective, The Insolvency Institute of Canada, January 1999
- Update on the Proposal to Provide Statutory Civil Liabilities for Continuous Disclosure; The Regulation of Real Estate Securities in British Columbia (Updated) (Co-Authored), Insight, Western Canadian Securities Conference, April 1998
- Civil Liability for Inadequate Disclosure Under Canadian Securities Law, 27th Annual Workshop on Commercial and Consumer Law, October 1997
- Mutual Fund Disclosure Initiatives, The Investment Funds Institute of Canada Mutual Fund Forum, April 1997
- Changes in the Regulation of Mutual Funds, Insight, B.C. Securities Forum - The Changing Face of BC Capital Markets, March 1997
- Regulation of Real Estate Securities, CBA Real Estate Property Section Meeting, January 1997
- Internet Disclosure - Corporate Communications on the World Wide Web, Insight, Western Canadian Securities Forum, November 1999

## **Publications**

- "The British Columbia Securities Commission mandates electronic filing of distribution reports", Securities and Mergers & Acquisitions Bulletin, August 2009
- "Q&A: What options are available to access public financing in volatile market conditions?", BC Business magazine's "Ask a Lawyer" feature, July 2009
- "BCSC announces streamlined short-form prospectus reviews for mining issuers", Securities and Mergers & Acquisitions Bulletin, July 2009
- "Global Mining Group Newsletter", Summer 2009 issue, June 2009
- "OSC Decision in HudBay Identifies Fair Treatment of Shareholders as the Key Consideration in Requiring HudBay Shareholder Approval of the Transaction and Questions the Independence of Financial Advisers", Securities and Mergers & Acquisitions Bulletin, June 2009
- "British Columbia Takes Action Under Instrument Regulating Over-the-Counter Issuers With Connections to British Columbia", Securities and Mergers & Acquisitions Bulletin, May 2009
- "Global Mining Group Newsletter", Spring 2009 issue, March 2009
- "CSA Offers Additional Guidance on Continuous Disclosure in Current Economic Conditions", Securities Law Bulletin, January 2009
- "Changes To Officer Certification Requirements", Securities Law Bulletin, January 2009
- "New Material Contract Filing Obligations Effective March 17, 2008", by Lata Casciano, Georald Ingborg and Steve Saville, February 2008
- "Proposed National Instrument 45-106 Harmonizing Prospectus and Registration Exemptions Across Canada", Securities and Mergers & Acquisitions Bulletin, February 2005
- "New Regulation Governing Commodity Pools", Investment Funds Bulletin by Lata Casciano, October 2002

## **Memberships and Affiliations**

- Securities Legal Advisory Committee to the British Columbia Securities Commission
- Securities Section, Canadian Bar Association, (BC Branch)
- Prospectors and Developers Association of Canada
- Association for Mineral Exploration of British Columbia





## Paul V. Casuccio

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[www.fasken.com/paul-casuccio](http://www.fasken.com/paul-casuccio)

Paul Casuccio has spent most of the last decade providing practical solutions to his clients' various sales tax questions, issues, problems and structures. Paul practices exclusively in the commodity tax area, with recognized expertise in dealing with Canada's goods and services tax and harmonized sales tax (GST/HST) as well as with the various provincial sales taxes, employer health taxes, land transfer taxes, alcohol, tobacco and other similar taxes.

Paul assists his clients with their commodity tax planning in all manners of circumstances, including business asset acquisitions, cross-border transactions, outsourcing arrangements, and Canadian start-ups and reorganizations. With sales tax harmonization occurring in 2010, Paul has developed particular expertise with respect to the new GST/HST rules facing the investment fund industry, and in addition to advising numerous clients on these new rules, has both spoken and written on the topic.

In addition to many of Canada's top companies, Paul's clients also include some of the world's largest multi-national corporations; non-resident entities entering the Canadian market; Canadian not-for-profit and charitable organizations, including a number of major hospitals and health care providers; and all manner of financial institutions.

Paul's practice also includes advocating on behalf of clients with the various tax authorities in Canada with respect to his clients' commodity tax issues, and is experienced in making effective voluntary disclosures, and obtaining favourable advance tax rulings. In addition, Paul has had numerous successes working with clients at the tax audit stage to assist with settling matters informally, but also regularly works with clients engaged in formal dispute resolution with Canada's taxing authorities, from the objection stage through to trial at Ontario Court or the Tax Court of Canada.

Paul regularly speaks at both industry group and commodity tax conferences, and has twice spoken at the national commodity tax symposium held in Ottawa each fall. Paul is also a widely published author on commodity tax issues in both books and academic journals, and is one of the contributing editors of the national Sales and Use Tax journal.

### Representative Experience

- *VisionTV sells broadcasting assets to ZoomerMedia in \$25 million transaction*  
Advised VisionTV
- *NFI Industries acquires IPD Global*  
Advised NFI Industries
- *Co-operators Life Insurance Company and Central 1 Credit Union complete \$245 million acquisition of The CUMIS Group*  
Advised Co-operators Life Insurance Company
- *FCI sells North American-based electrical division to Hubbell for US\$360 million*  
Advised FCI S.A.

### Areas of Practice

Taxation

### Education

BA,  
York University, 1998

LLB, Silver Medalist  
Osgoode Hall Law School at  
York University, 2001

In-Residence GST Course,  
Canadian Institute of Chartered  
Accountants, 2003

In-Depth Income Tax Course -  
Part I,  
Canadian Institute of Chartered  
Accountants, 2003

### Year of Call

Ontario, 2002

- *CCMP Capital stalking horse bidder in Eddie Bauer bankruptcy*  
Advised CCMP Capital Advisors
- *Northland Power Income Fund merges with Northland Power Inc.*  
Advised the Independent Trustees of Northland Power Income Fund in its merger with Northland Power
- *Barrick Gold purchases Hemlo stake from Teck Cominco for US\$65 million*  
Advised Barrick Gold
- *Ornge purchases aviation assets from CHL for \$30 million; enters into \$90 million service agreement for helicopter fleet*  
Advised Ornge
- *Handleman sells its Canadian music operations to Anderson Merchandisers*  
Advised Handleman Company
- *Foresters completes acquisition of Unity Life in Canada's first sponsored demutualization*  
Advised The Independent Order of Foresters
- *North Castle Partners acquires World Health Club*  
Advised North Castle Partners
- *Audiovox buys Thomson SA's non-European consumer electronics audio video business*  
Advised Audiovox Corporation
- *Liqui-Box sells performance films business to Exopack*  
Advised Liqui-Box Canada Inc.
- *TiVo comes to Canada*  
Advised TiVo with respect to Canadian legal issues related to doing business in Canada, including: distribution, packaging, French language requirements, consumer protection, tax, customs duties, importing, IP registrations, customer contracts, warranty and service contracts, privacy, security interests and collections, on-line terms and conditions, telecommunication equipment standards and specifications, and copyright issues
- *International Automotive Components completes Collins & Aikman soft trim acquisition*  
Advised International Automotive Components Group North America
- *DaimlerChrysler sells Chrysler Group to Cerberus Capital Management in US\$7.4 billion deal*  
Acted as special Canadian counsel to DaimlerChrysler AG
- *Smiths Group completes US\$4.8 billion sale of aerospace business to General Electric Company*  
Advised Smiths Group PLC
- *Nautical Data International insolvency proceedings and sale of rights to Department of Fisheries and Oceans*  
Advised Nautical Data International, Inc.
- *Hilton Canada sells last five Canadian hotels for \$243 million*  
Advised Hilton Canada Co.
- *Park Lawn Company creates income trust*  
Advised Park Lawn Company Limited
- *Retrocom Mid-Market REIT completes \$118 million IPO*  
Advised Retrocom Mid-Market REIT
- *P&O Ports Canada acquires assets of Casco Terminals and Canadian Stevedoring businesses of BCR Marine*  
Advised P&O Ports Canada Inc.

## **Presentations**

- Regulatory Update - NI 31-103 Registration Reform and Other Matters, Securities Regulatory Compliance Group Seminar, September 20, 2010
- Regulatory Update - NI 31-103 Registration Reform and Other Matters, Securities Regulatory Compliance Group Seminar, September 17, 2010
- Regulatory Update - NI 31-103 Registration Reform and Other Matters, Securities Regulatory Compliance Group Seminar, September 13, 2010
- Regulatory Update - NI 31-103 Registration Reform and Other Matters, Securities Regulatory Compliance Group Seminar, September 13, 2010
- Healthcare Philanthropy: Check-Up 2010, Trusts, Wills, Estates and Charities Group Seminar, June 10, 2010
- Recent Tax Developments, Taxation Group Seminar, April 22, 2010
- Impact of Harmonization, Canadian Electricity Association, November 2009
- GST/HST on Financial Derivatives, Insurance and Guarantees, CICA Commodity Tax Symposium, Ottawa, September 2008
- Tax Issues, Speaker, Establishing Private Healthcare Facilities, The Canadian Institute, June 2006
- Characterizing Supplies for GST/HST Purposes, CICA Commodity Tax Symposium, Ottawa, September 2005

## **Publications**

- "Will The HST Apply? The Proposed HST Place of Supply Rules", Taxation Bulletin, March 2010
- "Tax Measures in Budget 2010", Taxation Bulletin, March 5, 2010
- "Harmonized Sales Tax – Temporary Restrictions on Input Tax Credits for Large Businesses", Taxation Bulletin, February 4, 2010
- "GST/HST on Investment Management Fees: Department of Finance Releases Legislative Proposals to Overrule CMPA Decision", Taxation Bulletin, December 2009
- "Impact of Harmonized Sales Tax on Hospitals and Foundations", Taxation Bulletin, October 2009
- "British Columbia Releases General Transitional Rules for Harmonized Sales Tax", Taxation Bulletin, October 2009
- "Ontario Releases General Transitional Rules for Harmonized Sales Tax", Taxation Bulletin, October 2009
- "BC Joins Ontario in Eliminating PST: Harmonizing with Federal GST", Taxation Bulletin, July 2009
- "Ontario's "Tax Smart" Budget Means Tax Cuts For Business", Taxation Bulletin - Ontario Budget 2009, March 2009
- "Ontario to Eliminate Provincial Sales Tax July 1, 2010; Harmonize with Federal GST", Taxation Bulletin - Ontario Budget 2009, March 2009
- "Fasken Martineau Provides Overview of 2009 Federal Budget", Canada Report, January 27, 2009
- "The Ontario government using the existing federal business number (BN) as a single identifying number", Taxation Bulletin, June 20, 2008

- "Outsourcing Transactions: A Practical Guide", Eds. C. Ian Kyer and John Beardwood, Canada Law Book, 2008
- "Executors' Fees and Canada's Goods and Services Tax", CICA bulletin by Paul V. Casuccio, December 2005
- "Defining the Boundaries Between Real/Tangible Intangible Personal Property and Services", by Paul V. Casuccio, David Douglas Robertson and Pierre Bocti Canadian Institute of Chartered Accountants' Canadian Commodity Tax Symposium, September 2005
- "Proposed Changes to GST Rebate for the Health Care Industry", Health and Taxation Law Alert by Paul Casuccio, March 2005
- "A Problem with using fiscal accounting periods for GST Reporting", Taxation Law Bulletin, Ontario Bar Association, 2005
- "GST Update for Life and Health Insurance Companies", Taxation Bulletin by Paul Casuccio and David Douglas Robertson, May 2004
- "E-Commerce Law: Corporate-Commercial Practice", Contributor, by Mark Fecencko and Anita Huntley, Butterworths, 2003
- "The European Union VAT and E-Commerce Directive", Taxation Law Bulletin, Ontario Bar Association, May 2003
- "Canada: A Corporate Tax Haven?", Taxation Bulletin by Kathleen S. M. Hanly and Paul V. Casuccio, December 2002

### **Memberships and Affiliations**

- Contributing Editor, Sales and Use Tax Journal published by Federated Press
- Member, Canadian Tax Foundation
- Member, Ontario Bar Association
- Member, National Sales and Commodity Tax Section, Canadian Bar Association
- Member, Toronto Commodity Tax Study Group

### **Rankings and Awards**

- Silver Medalist, Osgoode Hall Law School, 2001



## Pierre-Yves Châtillon

**Associé**

### Montréal

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Pierre-Yves Châtillon se spécialise en droit des affaires, droit commercial et en valeurs mobilières, particulièrement dans le domaine du financement privé, des fusions, acquisitions et ventes d'entreprises. Il participe également à l'organisation, à la restructuration et au placement de fonds d'investissement privés et publics.

Dans le domaine des fonds d'investissement, il a participé au démarrage, au renouvellement, à la mise en commun et à la fermeture de fonds, notamment pour le compte de groupes de fonds publics et privés. Il s'est également occupé de questions découlant, entre autres, de l'acquisition et de la disposition de groupes de fonds et leurs gérants, de fonds de fonds, de l'utilisation d'instruments dérivés dans des produits alternatifs et de la mise en réseau.

Il représente des clients dans des dossiers concernant l'inscription et le respect des normes en tant que courtiers ou conseillers. Il a formulé des commentaires sur des projets de politique dans le domaine des fonds d'investissement et il a aidé les Autorités canadiennes en valeurs mobilières dans la rédaction du cadre réglementaire régissant les fonds de fonds.

Présentement, il siège au Groupe de travail de l'Institut des fonds d'investissement du Canada sur la gouvernance des fonds. Il est administrateur du Conseil des fonds d'investissement du Québec et en préside le Comité des opérations et procédures. Nommé par l'Autorité des marchés financiers du Québec, il est membre du Comité d'évaluation du Fonds réservé à l'éducation des investisseurs et à la promotion de la gouvernance. Il a aussi siégé à l'ancien comité d'examen indépendant des Fonds communs de placement LODH Opus.

M. Châtillon a donné plusieurs conférences sur le financement public, les fonds d'investissement en général et le respect des normes par les courtiers et les conseillers inscrits.

### Expérience pertinente

- *L'Industrielle Alliance acquiert le réseau de conseillers financiers de Patrimoine Dundee spécialisés en fonds mutuels et en assurance au Québec*  
A conseillé L'Industrielle Alliance, Assurance et services financiers inc.
- *L'Industrielle Alliance se porte acquéreur de Money Concepts et de AEGON Services aux courtiers Canada Inc.*  
A conseillé l'Industrielle Alliance, Assurance et services financiers inc.
- *Promutuel Capital achète le réseau de Gestion de Capital Triglobal inc.*  
A conseillé Promutuel Capital
- *Gestion de portefeuille Natcan Inc. conclut une convention de sous-gestion avec Gestion de portefeuille Selexia Inc. pour la gestion de ses portefeuilles d'actions canadiennes grande capitalisation-institutionnelle*  
A conseillé Natcan Investment Management

### Domaines de pratique

Droit des sociétés et droit commercial

Valeurs mobilières, fusions et acquisitions

Produits d'investissement et gestion du patrimoine

### Formation

B.A.,  
Université McGill, 1971

LL.L.,  
Université d'Ottawa, 1973

LL.B.,  
Université d'Ottawa, 1974

### Admission au Barreau

Québec, 1976

### Langues

Français

Anglais

- *Ethical Funds et Fonds Mutuels NordOuest concluent un partenariat et se dotent d'un actif sous gestion de 5,5 G\$*  
A conseillé le Mouvement des caisses Desjardins.
- *Addenda Capital conclut un PAPE de 114 M\$*  
A conseillé un consortium de preneurs fermes codirigé par Marchés mondiaux CIBC Inc. et Financière Banque Nationale Inc.
- *Gestion de patrimoine Dundee fait l'acquisition de StrategicNova*  
A conseillé Services financiers CDPQ inc.
- *Représentation de clients en matière de réglementation en valeurs mobilières*
- *Fusion et acquisition d'entreprises réglementées en valeurs mobilières*
- *Organisation et suivi de groupes de fonds d'investissement publics et privés, de fonds de couverture et de fonds de capital de risque*

## Présentations

- Le point sur la réglementation : Règlement 31-103 sur la réforme de l'inscription et autres questions, Le groupe Réglementation des valeurs mobilières, 13 septembre 2010
- Le point sur la réglementation : Règlement 31-103 sur la réforme de l'inscription et autres questions, Le groupe Réglementation des valeurs mobilières, 13 septembre 2010
- Comprendre le Règlement 31-103 sur les obligations d'inscription, Table ronde avec l'Autorité des marchés financiers (AMF), 18 avril 2008
- Mise en place d'un comité d'examen indépendant pour les fonds mutuels, 26 avril 2006
- 2e Conférence sur les Fiducies de Revenu - La fluctuation du marché : les fiducies de revenu seront-elles épargnées?, 16 mars 2005
- La responsabilité des bénéficiaires d'une fiducie de revenu : Y a-t-il danger?, 27 mai 2003

## Publications

- « La CVMO émet un avis du personnel au sujet des placements de contrats sur différence », Bulletin Valeurs mobilières, fusions et acquisitions, novembre 2009
- « Bulletin sur le Règlement 31-103 : Un nouveau régime », Bulletin Produits d'investissement et gestion du patrimoine, septembre 2009
- « Les autorités canadiennes en valeurs mobilières adoptent des modifications réglementaires pour élargir le régime de passeport à l'inscription », Bulletin sur le Droit des Valeurs mobilières, fusions et acquisitions, février 2009
- « Les Autorités canadiennes en valeurs mobilières proposent un nouveau régime d'inscription pour les courtiers, les conseillers et les sociétés de gestion », Bulletin Fonds d'investissement, mars 2008
- « Réforme réglementaire sur les obligations d'inscription (projet de Règlement 31-103) », Federated Press, mai 2007
- « Le projet de loi 30 a été adopté », par Dominique Monet, Lyne Duhaime et Pierre-Yves Châtillon, décembre 2006
- « Placements dispensés selon les Normes 45-106 et 45-102 », Coauteur
- « Mise en oeuvre des règles canadiennes sur les placements privés - Norme canadienne 45-106 », par Pierre-Yves Châtillon, 24 août 2005

- « Valeurs mobilières : nouvelles exigences en matière de dispenses de prospectus et d'inscription », 11 mars 2005
- « Nouvelles exigences : dispenses de prospectus et d'inscription », Bulletin Valeurs mobilières par Pierre-Yves Châtillon, Catherine Isabelle et Lévy Bazinet, mars 2005
- « Québec harmonise son régime de dispenses pour les placements et la revente de titres à celui en vigueur dans la plupart des autres territoires du Canada », Bulletin Valeurs mobilières par Pierre-Yves Châtillon, juin 2004
- « Propositions de réconciliation de la théorie et de la pratique : réexamen de l'information à fournir au point de vente des fonds distincts et des organismes de placement collectif (« OPC ») », Bulletin valeurs mobilières, juin 2003
- « Projet d'uniformisation de la législation en valeurs mobilières au Canada », Bulletin valeurs mobilières par Pierre-Yves Châtillon, avril 2003
- « Avant-projet de règlement des ACVM sur les obligations d'information continue des fonds d'investissement », Bulletin des fonds d'investissement par Christian Faribault et Pierre-Yves Châtillon, décembre 2002
- « La fiducie comme véhicule de fonds communs de placement », En collaboration avec Martin Cloutier, APFF, vol. 19, no 1, 1997

### Associations

- Barreau du Québec
- Barreau de Montréal
- Association du Barreau canadien où il a présidé le Comité des communications et de l'information de la Section du Québec
- Président du conseil, Fondation Armand-Frappier, un organisme caritatif dédié à la collecte de fonds destinés au matériel scientifique et aux bourses de l'INRS – Institut Armand-Frappier, un institut Louis Pasteur
- Administrateur et secrétaire du Studio de Musique Ancienne de Montréal, un ensemble de musique vocale dédié à la musique baroque et de la Renaissance
- Institut des fonds d'investissement du Canada
- Conseil des fonds d'investissement du Québec

### Classements et distinctions

- Le répertoire juridique canadien LEXPERT de 2010 le classe parmi les avocats les plus recommandés en matière de fonds d'investissement et de gestion de portefeuille
- Il est nommé dans l'édition 2010 du répertoire *Best Lawyers in Canada*
- Institut des administrateurs de sociétés, administrateur accrédité (IAS.A), avril 2008





## Garth J. Foster

*Partner*

### Toronto

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Facsimile: 416 364 7813

[gfooster@fasken.com](mailto:gfooster@fasken.com)

[www.fasken.com/garth-foster](http://www.fasken.com/garth-foster)

### Areas of Practice

Securities and Mergers & Acquisitions

Corporate / Commercial

Investment Products & Wealth Management

### Education

B Comm,  
Queen's University, 1981

LLB,  
University of Toronto, 1990

### Year of Call

Ontario, 1992

Garth is extensively involved in the investment funds, registration and securities law areas, and has experience with segregated funds. He actively advises a number of public and private investment funds and has been involved in launching a number of structured products. Garth has created new funds, including hedge funds, drafted trust, management, advisory, sub-advisory and distribution agreements, filed numerous applications for exemptive relief and prepared offering documents for both public and private funds. He has also been involved in a number of mutual fund acquisitions and reorganizations. In addition, Garth has registered, and provides ongoing compliance and registration advice, to various advisers and dealers. He also comments on policy initiatives in the investment funds, registration and securities law areas.

### Representative Experience

- *Horizons BetaPro launches North America's first leveraged Copper ETFs*  
Advised BetaPro Management Inc.
- *Horizons AlphaPro launches three new actively managed ETFs*  
Advised AlphaPro Management Inc.
- *Horizons AlphaPro S&P/TSX 60 130/30(TM) ETF launched - The first of its kind in Canada*  
Advised AlphaPro Management Inc.
- *Horizons AlphaPro Income Plus Fund closes \$29.5 million IPO*  
Advised AlphaPro Management Inc.
- *Horizons AlphaPro Gartman Fund completes conversion into ETF*  
Advised AlphaPro Management Inc.
- *Horizons AlphaPro Seasonal Rotation ETF launched*  
Advised AlphaPro Management Inc.
- *BetaPro Management launches 6 commodity-based Horizons BetaPro ETFs*  
Advised BetaPro Management Inc.,
- *Horizons AlphaPro Gartman Fund closes \$55 million IPO*  
Advised AlphaPro Management Inc.
- *UK government becomes 58% majority stakeholder in Royal Bank of Scotland*  
Advised The Royal Bank of Scotland Group plc
- *BetaPro Management launches 10 additional Horizons BetaPro ETFs*  
Advised BetaPro Management Inc.
- *Foresters Securities (Canada) sells mutual fund business*  
Advised Foresters Securities (Canada) Inc.

- *Fortis acquires ABN AMRO Asset Management Canada*  
Advised Fortis Bank SA/NV
- *Promutuel Capital buys Triglobal Capital Management network*  
Advised Promutuel Capital
- *BetaPro Management launches additional Horizons BetaPro ETFs*  
Advised BetaPro Management
- *Ethical Funds and Northwest Mutual Funds in new national partnership with \$5.5 billion assets under management*  
Advised Desjardins Group.
- *Royal Bank of Scotland consortium acquires ABN Amro in largest financial services merger in history*  
Advised Royal Bank of Scotland consortium on largest financial services merger in history
- *Horizons BetaPro ETFs listed on Toronto Stock Exchange*  
Advised BetaPro Management Inc.
- *Barometer Capital Management buys Rockwater Asset Management*  
Advised Barometer Capital Management Inc.
- *Perimeter Capital Management buys MoneyWare*  
Advised Perimeter Capital Management Inc.
- *Centerfire Growth Fund merges with Lawrence Enterprise Fund*  
Advised on the merger of Centerfire Growth Fund Inc., a labour sponsored investment fund, with Lawrence Enterprise Fund Inc., another labour sponsored investment fund, in March 2006.
- *BetaPro launches unique family of mutual funds*  
Advised BetaPro Management Inc.
- *Industrial Alliance acquires Co-operators Mutual Funds*  
Advised The Co-operators Group Limited
- *Millennium BullionFund in the formation of the first RRSP qualified public Canadian investment fund*  
Advised Millennium BullionFund

## **Presentations**

- Regulatory Update - NI 31-103 Registration Reform and Other Matters, Securities Regulatory Compliance Group Seminar, September 20, 2010
- Regulatory Update - NI 31-103 Registration Reform and Other Matters, Securities Regulatory Compliance Group Seminar, September 20, 2010
- Regulatory Update - NI 31-103 Registration Reform and Other Matters, Securities Regulatory Compliance Group Seminar, September 17, 2010
- Regulatory Update - NI 31-103 Registration Reform and Other Matters, Securities Regulatory Compliance Group Seminar, September 13, 2010
- Regulatory Update - NI 31-103 Registration Reform and Other Matters, Securities Regulatory Compliance Group Seminar, September 13, 2010
- Corporate Finance Market Brief - N1 31-103 Registration Implications for Corporate Finance, The Canadian Institute of Chartered Accountants, May 20, 2010
- NI 31-103 Registration Reform - Regulatory Update, Investment Products and Wealth Management Group Seminar, March 5, 2010
- Mutual Fund Dealers, NI 31-103 Registration Requirements Seminar Series, November 5, 2009

- Investment Dealers, NI 31-103 Registration Requirements Seminar Series, October 29, 2009
- Portfolio Managers, NI 31-103 Registration Requirements Seminar Series, October 22, 2009
- Investment Fund Managers, NI 31-103 Registration Requirements Seminar Series, October 15, 2009
- Exempt Market Dealers, NI 31-103 Registration Requirements Seminar Series, October 6, 2009
- Understanding National Instrument 31-103 Registration Requirements, Roundtable discussion with the BCSC (British Columbia Securities Commission), April 24, 2008
- Understanding National Instrument 31-103 Registration Requirements, Roundtable discussion with the AMF (Autorité des Marchés Financiers), April 18, 2008
- Understanding National Instrument 31-103 Registration Requirements, Roundtable discussion with the OSC (Ontario Securities Commission), April 15, 2008
- ICPM-Mutual Fund Manager Registration Reform, June 1, 2007
- National Instrument 31-103 Registration Reform, May 1, 2007
- Justifying the Use of Soft Dollars: What this means to the Mutual Fund Industry, Speaker, April 2007
- Adapting Due Diligence Checklists as part of a Risk Management and Compliance Strategy, Co-Speaker, April 2007
- Regulatory Registration Reforms and Compliance Issues, Chair and Speaker at panel discussion on Regulatory Registration Reforms and Compliance Issues, April 2006, April 2006

### **Publications**

- "National Instrument 31-103: A New Registration Regime", Investment Products & Wealth Management Bulletin, September 2009
- "National Instrument 31-103 Registration Requirements – Update", Investment Products & Wealth Management Bulletin, April 2009
- "Canadian Securities Administrators Propose Revised Registration Regime for Dealers, Advisers and Fund Managers", Investment Funds Bulletin, March 2008
- "Proposed National Instrument 81-106", Investment Funds Bulletin by Garth Foster, August 2004
- "Update: National Registration Database", Securities and Mergers & Acquisitions Bulletin by Garth Foster and Mable Lam, April 2004

### **Memberships and Affiliations**

- Former member of IFIC Dealer Issues Committee, IFIC Manager Issues Committee, IFIC Regulatory Steering Committee, IFIC Sales Practices Steering Committee, IFIC Sales Communications Steering Committee and IFIC Fund of Fund Working Group
- Member, Canadian Bar Association
- Member, International Bar Association

### **Rankings and Awards**

- Listed as a highly recommended lawyer in the area of Investment Funds (Canada) by Practical Law Company in 2009

### **Community Involvement**

- Active member of Toronto Kiwanis Boys and Girls Clubs



## Gina A. Yee

*Partner*

### Toronto

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#### Areas of Practice

Investment Products & Wealth Management  
Securities and Mergers & Acquisitions

#### Education

LLB,  
University of Toronto, 1990  
MSc,  
University of British Columbia,  
1986  
BSc,  
University of Manitoba, 1984  
Chief Compliance Officer  
Course,  
Canadian Securities Institute,  
2008  
Partners, Directors and Officers  
Course,  
Canadian Securities Institute,  
2000  
Conduct and Practices  
Handbook course,  
Canadian Securities Institute,  
1999  
Canadian Operations Course,  
Canadian Securities Institute,  
1999  
Canadian Options Course,  
Canadian Securities Institute,  
1998  
Canadian Securities Course,  
Canadian Securities Institute,  
1998

#### Year of Call

Ontario, 1992

#### Languages

English

Gina A. Yee is a partner and recent addition to the Investment Products and Wealth Management and the Securities and Mergers & Acquisitions Practice Groups. Gina is participating in the creation of a new specialized Securities Regulatory Compliance Group, focused on supporting investment dealers and other securities registrants with all aspects of their business and regulatory compliance needs. Before returning to private practice, Gina was at Scotia Capital Inc. for over 8 years serving as Chief Compliance Officer, VP Head of Institutional Compliance, Senior Regulatory and Compliance Advisor, Anti-Money Laundering Officer and In-house Compliance Counsel. Prior to Scotia, she was the VP Head of Retail Compliance and Legal Counsel at HSBC Securities (Canada) Inc. Her experience and expertise includes global capital markets, global corporate and investment banking and retail/wealth management. Gina has participated in the acquisition, integration and registration of new business entities and business lines, and in the creation of supervisory and compliance processes, policies and procedures, risk controls and training programs to support those businesses. She provides business conduct and trade desk support and assists clients with managing internal investigations and regulatory inquiries. Gina is a current member of the Market Rules Advisory Committee (MRAC) and Compliance Legal Section (CLS) Education Committee, and a past member of the CLS Executive Committee and the Securities Advisory Committee (SAC) to the Ontario Securities Commission.

### Presentations

- CLS Training Seminar, Investment Products & Wealth Management Group Seminar, October 15, 2010
- Regulatory Update - NI 31-103 Registration Reform and Other Matters, Securities Regulatory Compliance Group Seminar, September 17, 2010
- Corporate Finance Market Brief - N1 31-103 Registration Implications for Corporate Finance, The Canadian Institute of Chartered Accountants, May 20, 2010
- IIROC/MFDA – Changing Landscape of Conflicts and Disclosure Requirements, NSCP Canadian Membership Meeting, May 3, 2010
- NI 31-103 Registration Reform - Regulatory Update, Investment Products and Wealth Management Group Seminar, March 5, 2010
- Anti-Money Laundering - Guide for Members, Winter Symposium, Investment Industry Association of Canada, February 25, 2010

### Publications

- "Proposed Personal Financial Dealings and Outside Business Activities Proposals – IIROC Request for Comment Notice 10-0155", Securities and Mergers & Acquisitions Bulletin, June 2010

- "Joint Staff Notice 23-308 - Update on "Dark Pools, Dark Orders and Other Developments in Market Structure in Canada" and Next Steps", Securities and Mergers & Acquisitions Bulletin, June 2010
- "CSA Staff Notice 31-317 Reporting Obligations Related to Terrorist Financing for Registrants, Exempt International Dealers and Exempt International Advisors", Securities and Mergers & Acquisitions Bulletin, May 2010
- "Canadian Securities Administrators Amend Certain Provisions of National Instrument 24-101 Institutional Trade Matching and Settlement and Companion Policy 24-101", Securities and Mergers & Acquisitions Bulletin, April 2010
- "Securities and Mergers & Acquisitions Newsletter", April 2010
- "Canadian Securities Administrators Release Staff Notice 31-315 Regarding Orders Exempting Registrants from Certain Provisions of National Instrument 31-103 - Registration Requirements and Exemptions", Investment Products and Wealth Management Bulletin, March 2010

### **Memberships and Affiliations**

- Market Rules Advisory Committee (MRAC)
- IIROC Compliance Legal Section (CLS) Education Committee

### **Past Member of:**

- IIROC CLS Executive Committee
- OSC Securities Advisory Committee (SAC) Member, Canadian Bar Association



# RÉFÉRENCE

**13 septembre 2010**

## **Les ACVM proposent des modifications au règlement 31-103 sur les obligations et dispenses d'inscription**

Par : Pierre-Yves Châtillon

Le 25 juin 2010, les Autorités canadiennes en valeurs mobilières (les « ACVM ») ont publié aux fins de consultation des projets de modification du *Règlement 31-103 sur les obligations et dispenses d'inscription* (le « Règlement 31-103 ») et des documents connexes pour éclaircir certaines questions et éliminer certaines préoccupations survenues durant la mise en application initiale du Règlement 31-103, ainsi que pour codifier les dispenses générales concernant des considérations liées à la transition au nouveau régime d'inscription au Canada. La période de consultation prend fin le 30 septembre 2010.

Voici un bref résumé des projets de modification présentés dans l'avis des ACVM :

### **1. Obligations de compétence**

#### **Connaissance du produit**

Il est proposé d'ajouter à l'article 3.4 du Règlement 31-103 l'obligation, pour le représentant inscrit, de comprendre la structure, les caractéristiques et les risques de chaque titre qu'il recommande à un client.

#### **Dispositions transitoires et clauses de protection des droits acquis**

Il est proposé de modifier la section 3 du Règlement 31-103 de façon à codifier une dispense générale du 26 février 2010 qui étendrait les dispositions transitoires et les clauses de protection des droits acquis en matière de compétences au chef de la conformité de gestionnaires de portefeuille qui s'inscrivent dans les catégories de courtier en épargne collective, de courtiers sur le marché dispensé ou de gestionnaire de fonds d'investissement et qui nomment le chef de la conformité.

Les modifications proposées étendent également les dispositions transitoires et les clauses de protection des droits acquis à ces personnes dans un autre territoire lorsque leur société s'y inscrit.

Finalement, les modifications dispensent les représentants-conseils de gestionnaires de portefeuille ajoutant la catégorie de courtier en épargne collective ou de courtier sur le marché dispensé des obligations de compétence liées.

#### **Inscription de personnes physiques travaillant pour plus d'une société**

La modification ajoutera à l'interdiction existante énoncée à l'article 4.1 relative à l'inscription d'une personne physique qui est un dirigeant, un administrateur ou un associé d'une autre société qui n'est pas membre du même groupe, l'interdiction pour une telle personne physique d'être inscrite dans une autre société, qu'elle soit ou non membre du même groupe.

#### **Application aux conseillers de la dispense d'inscription à titre de courtier prévue à l'article 8.6**

Il est proposé d'étendre la dispense actuelle prévue à l'article 8.6 du Règlement 31-103, qui s'applique aux titres de fonds d'investissement qui ne sont pas placés au moyen d'un prospectus, aux titres de tous les fonds d'investissement.

#### **Catégories de courtiers internationaux et de conseillers internationaux**

Certaines modifications d'ordre technique similaires seraient apportées relativement aux catégories de courtiers internationaux et de conseillers internationaux, et des précisions seraient apportées en ce qui concerne les obligations de résidence canadienne pour les clients autorisés et les avis à leur remettre.

#### **Avis aux clients de personnes inscrites non résidentes**

L'article 14.5 du Règlement 31-103 serait modifié de façon à ce que les sociétés inscrites dont le siège est situé au Canada ne seraient tenues d'envoyer l'avis qu'il prévoit qu'aux clients résidant dans un territoire où la société n'a pas d'établissement.

### Membres inscrits d'un organisme d'autoréglementation (« OAR »)

Les dispenses accordées aux membres de l'Association canadienne des courtiers de fonds mutuels (« ACCFM ») seront harmonisées avec les dispenses accordées aux membres de l'Organisme canadien de réglementation du commerce des valeurs mobilières (« OCRCVM ») aux termes des articles 9.3 et 9.4, là où les règles applicables aux membres de l'ACCFM sont similaires. Des dispenses supplémentaires seraient accordées aux membres de ces deux OAR lorsque les règles applicables à leurs membres sont compatibles avec celles du Règlement 31-103.

### Information sur les mouvements de compte

Plusieurs modifications sont envisagées en vue d'aligner sur la pratique générale les obligations d'information de toutes les sociétés inscrites, notamment en permettant à un courtier d'envoyer un avis d'exécution directement au gestionnaire de portefeuille relativement aux comptes qu'il gère, et en permettant à un gestionnaire de fonds d'investissement d'envoyer un avis d'exécution à un porteur de titres après l'exécution d'un ordre de rachat.

Les gestionnaires de fonds d'investissement devraient également envoyer un relevé de compte au porteur au moins tous les 12 mois si aucun courtier n'est inscrit au registre du gestionnaire pour le porteur.

Dans les relevés des clients, les titres seraient évalués en fonction de leur juste valeur selon les IFRS.

Finalement, les ACVM proposent d'imposer aux sociétés inscrites d'inclure aussi dans leurs relevés périodiques à l'intention de leurs clients les titres qu'elles ont vendus au client, mais qu'elles ne détiennent pas ni ne contrôlent (tels que les titres « au nom du client »). Le relevé fournirait ainsi une description plus exacte du portefeuille du client, mais cela imposerait aux sociétés inscrites la charge supplémentaire de recueillir l'information.

### Renvois aux IFRS

En vue du passage aux Normes internationales d'information financière (IFRS), les mots « valeurs de marché » utilisés dans le Règlement 31-103 seraient remplacés par les mots « juste valeur ».

D'autres modifications d'ordre technique sont proposées en vue d'assurer une plus grande clarté. Il est également proposé d'apporter des modifications correspondantes à l'*Instruction générale relative au règlement 31-103 sur les obligations et dispenses d'inscription*, ainsi qu'au *Règlement 33-109 sur les renseignements concernant l'inscription* et ses annexes.

Les ACVM poursuivent leurs travaux sur des questions comme :

1. l'application de l'obligation d'inscription à titre de gestionnaire de fonds d'investissement aux entités non-résidentes qui dirigent les activités de fonds d'investissement de l'extérieur des territoires;
2. la dispense en faveur des sous-conseillers prévue à l'article 7.3 de la Rule 35-302, *Non Resident Advisers*, de la Commission des valeurs mobilières de l'Ontario, et les dispenses équivalentes accordées dans d'autres territoires;
3. les dispenses pour les régimes de capitalisation; et
4. certaines obligations et indications dans le cadre de l'élaboration du modèle de relation client-conseiller (« MRCC »).

[Consulter le texte intégral de l'avis des ACVM et des projets de règlements](#) (PDF)

Pour plus de renseignements, n'hésitez pas à communiquer avec l'auteur de ce bulletin :

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**September 13, 2010**

## **CSA Proposes Amendments to National Instrument 31-103: Registration Requirements and Exemptions**

By: Pierre-Yves Châtillon

The Canadian Securities Administrators ("CSA") published for comments on June 25, 2010 proposals to amend National Instrument 31-103 *Registration Requirements and Exemptions* ("NI 31-103") and related instruments to clear issues and concerns that arose during the initial application of NI 31-103 and to codify omnibus/blanket relief orders addressing transition issues raised by the new registration regime across Canada. The comment period will end on September 30, 2010.

You will find below a brief Summary of the draft proposed changes contained in the CSA notice:

### **1. Proficiency Requirements**

#### **Know Your Product**

A requirement would be added in Section 3.4 of NI 31-103 to emphasize the requirement that a registered representative understand the structure, features and risks of securities recommended to a client.

#### **Transition/Grandfathering Provisions**

A change to Section 3 of NI 31-103 codifying a February 26, 2010 omnibus/blanket relief order would extend the transition / grandfathering provisions on proficiency granted to chief compliance officers of portfolio managers who register in the categories of mutual fund dealer, exempt market dealer or investment fund manager and appoint the individual to the same position.

Proposed changes also extend the transition /grandfathering provisions to these persons in another jurisdiction when their firms register that jurisdiction.

Finally, the changes provide relief from dealing representative proficiency requirements for portfolio managers adding a registration in the mutual fund dealer or exempt market dealer category.

#### **Individual Registration in More Than One Firm**

The change will add to the existing prohibition in Section 4.1 for an individual registrant as officer, director or partner of another firm that is not an affiliate, a prohibition to be registered in any other firm, affiliated or not.

#### **The Section 8.6 Dealer Registration Exemption for Advisers**

It is proposed to expand the current exemption in Section 8.6 of NI 31-103 from non-prospectus qualified investment funds securities, to all investment fund securities.

#### **International Dealer and International Advisor Categories**

Certain similar technical changes would be made in respect of the international dealer and international adviser categories, as well as clarifications concerning the Canadian residency requirement for permitted clients and the client notice requirement.

#### **Notice to Clients – Non-Resident Registrants**

Section 14.5 of NI 81-103 would be amended so that registered firms whose head office is in Canada would only be required to send the notice it prescribes to clients in jurisdictions where the firm does not have a place of business.

#### **SRO Registrants**

The exemptions granted to MFDA members will be harmonized with those awarded to IIROC members under Sections 9.3 and 9.4 where MFDA member rules are similar. Additional exemptions are proposed to be granted to members of both SROs where their member rules are compatible with those of NI 31-103.

#### **Account Activity Reporting**

Several amendments are contemplated both to align reporting requirements for all registered firms to general practice, such as allowing a dealer to send a trade confirmation directly to the portfolio manager in respect of accounts managed by it, and an investment fund manager to send a trade confirmation to a security holder after executing a redemption order.

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Investment fund managers would also have to send an account statement at least once every 12 months to security holders who do not have a dealer of record on their files.

Fair valuing under IFRS would be required in client statements.

Finally, the CSA is considering having registered firms to include in their periodic account statements to clients securities they have sold to clients which they hold and control as well as those which they do not hold and control (such as securities "in client name"). This would provide a more complete picture of the client's portfolio, but also an extra burden on registered firms to seek the information.

### References to IFRS

In anticipation of the changeover to International Financial Repertory Standards (IFRS), references to "market value" in NI 31-103 will be replaced by references to "fair value".

Other technical changes are proposed throughout the instrument to provide greater clarity. Consequential changes are also proposed to the companion policy, 31-103 CP, as well as to Regulation 33-109 *Registration Information* and its forms.

The CSA is still considering matters such as:

1. applying the investment fund manager registration requirements to non-resident entities directing the operation of investment funds from outside the jurisdictions;
2. the exemption for sub-advisers in Section 7.3 of OSC Rule 35-502 *Non Resident Advisers* and equivalent relief in other jurisdiction;
3. the exemption for capital accumulation plans; and
4. certain proposed requirements and guidance as part of the CSA's client relationship model ("CRM").

[View the complete text of the CSA notice and draft regulations](#) (PDF).

For more information on the subject of this bulletin please contact the author:

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