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INVESTMENT MANAGEMENT BULLETIN

SPRING 2010

What's Ahead? At a Glance

Key Developments in Canadian Securities Regulation for the Investment Management Industry

What's Ahead? At a Glance outlines the key securities regulatory developments that will affect the investment management industry in Canada. BLG's Investment Management Group prepares these outlines semiannually, reporting on the current status of each initiative, as well as the expected next steps. New initiatives or material changes in status of any initiative since the last *What's Ahead* are indicated with a ✓.

Please click on the links provided to access our more detailed newsletters on the various initiatives.

The Investment Management Group at Borden Ladner Gervais LLP consists of a team of over 50 lawyers located in offices across Canada who understand the business, regulatory and administrative issues that face participants in the Canadian investment management industry. We have the largest and most experienced investment management practice in Canada, having provided legal services to Canadian and international industry participants for over 50 years.

Our lawyers are leaders in investment funds, registrant regulation and compliance, private pooled and hedge funds and structured products. BLG's Investment Management Group is ranked Number 1 in Canada in *The Best Lawyers in Canada* (2008 and 2009). Several of our lawyers are recognized as leaders in the area of investment funds in industry publications, including

- Guide to Leading 500 Lawyers in Canada (Lexpert/American Lawyer)
- Canadian Legal Lexpert Directory
- Best Lawyers in Canada
- Who's Who Legal The International Who's Who of Business Lawyers
- PLC Cross border Investment Funds Handbook

Our clients, both Canadian and international, include open and closed-end investment fund complexes, providers of alternative investment, pooled and private equity products, investment advisers and dealers, financial institutions, service providers, securities regulators, self regulatory organizations and industry trade associations.

BLG is a leading, full service, integrated national law firm focusing on business law, litigation and intellectual property solutions for our clients. With more than 750 lawyers, intellectual property agents and other professionals in Vancouver, Calgary, Toronto, the Waterloo Region, Ottawa and Montréal, clients turn to BLG for assistance with their legal needs, from major litigation to corporate finance and patent registration.

WHAT'S HAPPENED

✓Canadian Securities Regulator

Government of Canada Moves to Protect Canadian Investors: Backgrounder, Fact Sheets and Proposed Canadian Securities Act
Department of Finance Canada May 26, 2010.

Passport System for Provincial Securities Regulation

National Policy 11-204 *Process for Registration in Multiple Jurisdictions* CSA September 2009.

✓Registrant Regulation

National Instrument 31-103 *Registration Requirements and Exemptions* CSA September 2009 (National Instrument and Companion Policy, together with other consequential amendments including revisions to National Instrument 45-106).

Client Relationship Model Notice 090120
Investment Industry Regulatory Organization of Canada April 2009.

MFDA Bulletin No. 0370P *Proposed Amendments to MFDA Rule 2.2 (Client Accounts), MFDA Policy No. 2 Minimum Standards for Account Supervision,*

WHAT'S NEXT?

➤ Canadian Securities Transition Office commenced work in July 2009. Doug Hyndman, the former BCSC Chair, appointed as Chair and CEO of the Transition Office. Advisory Committee to the Transition Office appointed in October 2009 consists of representatives of all provinces and territories of Canada, other than Québec, Alberta and Manitoba.

On May 26, 2010, the Government of Canada released a proposed federal Securities Act and concurrently referred the Act to the Supreme Court of Canada for an opinion on whether it falls within the legislative authority of the Parliament of Canada.

See Proposed Federal Securities Act Referred to the Supreme Court of Canada Securities & Capital Markets Alert May 28, 2010 Borden Ladner Gervais LLP.

➤ Passport systems for prospectus filings and exemptive relief applications in place March 17, 2008 and for registration filings September 28, 2009.

➤ NI 31-103 in force as of September 28, 2009, with various transition periods for specified rules.

Comment period on IIROC and MFDA revised rule changes to implement the Client Relationship Model ended July 2009. IIROC rule amendments to reflect NI 31-103 published, as approved by the applicable CSA members, on October 9, 2009.

See BLG's nine-part series *Keeping Reforms in Sight: Understanding the New Canadian Registration Requirements Canadian Securities Regulators Release Final Registration Rule (July 2009), What's New? Investment Dealers IIROC Members; What's New? Mutual Fund Dealers MFDA Members; What's New? Exempt Market Dealers; What's New? Advisers – Portfolio Managers; What's New? Investment Fund*

WHAT'S HAPPENED

Rule 2.8 (Client Communications) and Rule 5.3 (Client Reporting) Mutual Fund Dealers Association of Canada April 2009.

IIROC Rules Amendments to Implement the Registration Reform Project October 2009.

CSA Staff Notices 31-313 and 31-314 NI 31-103 Registration Requirements and Exemptions and Related Instruments – Frequently Asked Questions as of February 5, 2010 (Consolidated) CSA December 2009 and February 2010.

Registrant Regulatory Compliance

OSC Staff Notice 33-729 Marketing Practices of Investment Counsel/Portfolio Managers OSC November 2007.

OSC Staff Notice 11-760 Report on Mutual Fund Sales Practices under Part 5 of National Instrument 81-105 Mutual Fund Sales Practices OSC April 2007.

OSC Staff Notice 11-763 A Focused Review of the Securities Valuation and Expense Allocation Practices of Fund Managers OSC July 2008.

10 Most Common Deficiencies Among Portfolio Managers OSC October 2008.

CSA Staff Notice 33-315 Suitability Obligation and Know Your Product CSA September 2009.

OSC Staff Notice 33-732 2009 Compliance Team Annual Report OSC September 2009.

International Financial Reporting Standards (IFRS) – Registrants and Investment Funds

Proposed National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards and related companion policy CSA September 2009.

WHAT'S NEXT?

Managers; Impact on the Hedge Fund Industry; Impact on Non-Canadian Securities Market Participants; National Instrument 31-103 At A Glance Investment Management Advisories August 2009 Borden Ladner Gervais LLP.

See *National Instrument 31-103: The First Six Months – What's Next?* Investment Management Bulletin April 2010 Borden Ladner Gervais LLP.

OSC staff notices outline common compliance deficiencies for fund managers and entities registered as advisers (portfolio managers).

See *OSC Provides Guidance on Complying with Mutual Fund Sales Practices Rule* Investment Management Advisory May 2007 Borden Ladner Gervais LLP.

See *Ontario Securities Commission Staff Notice Released on Marketing Practices of Registered Advisers Registrant Regulation and Compliance Alert* Investment Management Advisory November 2007 Borden Ladner Gervais LLP.

Comment periods on the IFRS-related changes to the various instruments ended:

– for proposed NI 52-107 – December 24, 2009

WHAT'S HAPPENED

Proposed amendments to National Instrument 31-103 *Registration Requirements and Exemptions* CSA October 2009.

Proposed amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure* CSA October 2009.

Point of Sale Disclosure for Mutual Funds

Proposed amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* and related policy and forms CSA June 2009. ➤

Investment Fund Governance

National Instrument 81-107 *Independent Review Committee for Investment Funds* CSA July 2006. ➤

CSA Staff Notice 81-317 *Frequently Asked Questions on National Instrument 81-107 Independent Review Committee for Investment Funds* CSA March 2007.

WHAT'S NEXT?

- for proposed amendments to NI 31-103 – January 21, 2010
- for proposed amendments to NI 81-106 – January 14, 2010

Final versions expected to be in force by July 1, 2010.

See *CSA Releases Proposals for Canadian Registrants and Investment Funds to Comply with International Financial Reporting Standards (IFRS)* Investment Management Advisory November 2009 Borden Ladner Gervais LLP.

Comment period on the proposed amendments to National Instrument 81-101 to implement the point of sale disclosure proposals for mutual funds ended October 17, 2009. Comment letters, including comment letter of Borden Ladner Gervais LLP, being considered by the CSA and available on the OSC's website. Revised Point of Sale initiative expected to be published by CSA in 2010.

See *Point of Sale Proposals for Canadian Mutual Funds Released for Comment* Investment Management Advisory July 2009 Borden Ladner Gervais LLP.

OSC and AMF staff reviewing disclosure of funds and their IRCs to determine compliance with NI 81-107. Staff notice expected to be released in 2010 on results of review.

See *Canadian Investment Fund Governance Becomes Reality: Final National Instrument 81-107 Released* Investment Management Advisory August 2006 Borden Ladner Gervais LLP; and BLG's ten-part series of Practice Bulletins entitled *BLG's Countdown to Governance: Getting Ready*, June 2006 to September 2006.

See *A Year Two Review for Independent Review Committees* Investment Management Advisory December 2008 Borden Ladner Gervais LLP.

INVESTMENT MANAGEMENT BULLETIN

WHAT'S HAPPENED

Asset-Backed Commercial Paper and Investment Funds

Securities Regulatory Proposals Stemming from the 2007-08 Credit Market Turmoil and its Effect on the ABCP Market in Canada CSA October 2008.

✓Scholarship Plan Regulation

Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*, Form 41-101F2 and Related Amendments. CSA March 2010

✓Mergers of Listed Investment Funds

Amendments to Part VI of The Toronto Stock Exchange ("TSX") Company Manual (The "Manual") The Toronto Stock Exchange November 13, 2009

Capital Accumulation Plans Guidelines and Proposed Exemptions for Mutual Funds

Joint Forum of Financial Market Regulators *Guidelines for Capital Accumulation Plans* May 2004.

Amendments to National Instrument 45-106 Prospectus and Registration Exemptions and Adoption of Local Prospectus and Registration Exemptions for Certain Capital Accumulation Plans CSA October 2005.

✓Insider Reporting and Early Warning Reports

National Instrument 55-104 *Insider Reporting Requirements and Exemptions*, Companion Policy and Related Consequential Amendments, including to National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*. CSA January 2010.

WHAT'S NEXT?

Comment period on consultation paper ended February 16, 2009. CSA considering comments provided on various questions posed in consultation paper, including those related to investments by mutual funds, and specifically money market funds, in ABCP.

Comment period on the proposed amendments to National Instrument 41-101 to implement new prospectus disclosure for scholarship plans ends June 22, 2010.

Comment period on the proposed amendments relating to mergers of investment funds ended December 14, 2009. Comment letters, **including comment letter of Borden Ladner Gervais LLP**, being considered by the TSX.

See *TSX Proposes New Security Holder Approval Requirements for Acquisitions of Listed Investment Funds* Investment Management Advisory November 2009 Borden Ladner Gervais LLP.

All Canadian regulators, other than the OSC and the Québec regulator, granted "blanket" prospectus and registration exemptions to allow mutual funds to be used as investment options for CAPs. Comment period on proposed amendments to NI 45-106 ended January 19, 2006. Comment letters, **including comment letter of Borden Ladner Gervais LLP**, being considered by CSA.

National Instrument 55-104 and related amendments came into force on April 30, 2010. The accelerated filing deadline (from 10 to 5 days) for insider reports becomes effective on October 31, 2010.

See *Changes to Insider Reporting: 5 Day Filing, Deemed Beneficial Ownership and Reporting for Derivatives* Securities & Capital Markets Bulletin January 2010 Borden Ladner Gervais LLP.

INVESTMENT MANAGEMENT BULLETIN

WHAT'S HAPPENED

✓Straight-through Processing

Amendments to National Instrument 24-101 *Institutional Trade Matching and Settlement* and Companion Policy 24-101CP CSA April 2010.

✓Soft Dollars

National Instrument 23-102 *Use of Client Brokerage Commissions as Payment for Order Execution Services or Research Services* CSA October 2009.

Amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* and National Instrument 41-101 *General Prospectus Requirements* CSA April 2010.

✓Beneficial Owners and Meetings

Proposed amendments to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer and Companion Policy* 54-101CP, National Instrument 51-102 *Continuous Disclosure Obligations* and its related forms and Companion Policy and National Policy 11-201 *Delivery of Documents by Electronic Means*.

✓Best Execution and Other Trading Rules

Amendments to National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules* CSA November 2009.

CSA/IIROC Joint Staff Notice 23-308 *Update on Forum to Discuss CSA/IIROC Joint Consultation Paper 23-404 "Dark Pools, Dark Orders and Other Developments in Market Structure in Canada" and Next Steps*. CSA/IIROC May 2010.

WHAT'S NEXT

New Conditions to the Insider Reporting Exemption for Eligible Institutional Investors Effective April 30, 2010 Investment Management Alert April 2010 Borden Ladner Gervais LLP.

Amendments to NI 24-101 are expected to come into force July 1, 2010 and extend deadlines for trade matching.

Final rule in force June 30, 2010. Six month transition period for prescribed disclosure to existing clients.

Amendments to National Instrument 81-101 (AIF disclosure for mutual funds) and National Instrument 41-101 (prospectus disclosure for investment funds) become effective June 30, 2010.

See Rules Regulating the Use of Client Brokerage Commissions in Canada to be Effective June 30, 2010 Investment Management Advisory November 2009 Borden Ladner Gervais LLP.

Comment period on the proposed amendments, which will introduce, among other things a "notice and access" regime for meetings other than special meetings and enhanced disclosure regarding the beneficial owner voting process, ends August 31, 2010.

Amendments to National Instruments 21-101 and 23-101 relating to best execution came into force on September 12, 2008. Further amendments to these National Instruments to mandate order protection (previously known as trade-through protection) finalized in November 2009. Rules regarding order protection to come into force February 1, 2011. Other rules in force January 28, 2010.

CSA/IIROC staff continue to review the issues discussed in Joint Staff Notice and Joint Consultation Paper. Proposals to change trading rules may be published in fall 2010.

WHAT'S HAPPENED

✓Hedge Funds and other Alternative Investment Products

OSC Staff Notice 33-733 *Report on Focused Reviews of Investment Funds, September 2008 – September 2009*. CSA January 2010

Regulation of Derivatives

Final Report Ontario Commodity Futures Act Advisory Committee January 2007.

Regulatory Analysis of Contracts for Differences (CFDs) Investment Dealers Association of Canada June 2007.

Proposed Framework for Regulation of Derivatives Market in Québec Autorité des marchés financiers August 2007.

Bill 77 *Derivatives Act* (Québec) June 2008.

The Derivatives Regulation Autorité des marchés financiers December 2008.

Policy Statements respecting Accredited Counterparties, Hybrid Products and Self-Certification Autorité des marchés financiers January 2009.

OSC Staff Notice 91-702 *Offerings of Contracts for Differences and Foreign Exchange Contracts to Investors in Ontario* OSC October 2009.

WHAT'S NEXT?

OSC Staff Notice reports on findings from focused reviews of money market funds, hedge funds and structured products (non redeemable investment funds) conducted from September 2008 – September 2009.

See *OSC Targets Hedge Funds – Again* Investment Management Alert February 5, 2009
Borden Ladner Gervais LLP.

Derivatives Act (Québec) and related regulations and policies came into force as of February 1, 2009.

See *Québec Derivatives Act in Force as of February 1, 2009 Key Considerations for Industry Participants* Investment Management Alert February 2, 2009
Borden Ladner Gervais LLP.

See *OSC Issues Staff Notice 91-702 Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors in Ontario* Securities & Capital Market Alert October 2009 Borden Ladner Gervais LLP.

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The Spring 2010 edition of *What's Ahead* is current as of May 31, 2010. If you have any questions about the regulatory developments noted in *What's Ahead* or if you would like us to include the status of another initiative in our next edition of *What's Ahead*, please contact:

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