Want to deal with Canadian clients or investors? What you need to know before you cross the border

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Canada's unique regulatory environment can present opportunities and challenges for U.S. firms looking to offer their funds or services to Canadians. Even the simple task of marketing your fund to a Canadian investor can put you offside Canadian securities law if you do not have a dealer that is authorized or exempt in the relevant jurisdiction of Canada with you at the pitch meetings. Exemptions from Canadian dealer, adviser and investment fund manager registration requirements may be available to U.S. registered firms, but important restrictions and limitations apply. U.S. firms should ensure that they understand the Canadian regulatory regime before crossing the border.

Key takeaways

- Marketing investment funds to Canadian investors triggers Canadian securities laws, often requiring a Canadian-registered or exempt dealer at the *marketing* stage—not just at closing.
- Canadian registration exemptions (dealer, adviser, investment fund manager) are available to U.S. firms but apply only under strict conditions and annual filings.
- Provincial differences matter: Ontario, Québec, and Newfoundland & Labrador impose additional obligations on foreign investment fund managers, especially when active solicitation occurs.
- Providing an offering memorandum or foreign fund documents to a Canadian can trigger statutory liability, requiring a Canadian disclosure wrapper and regulatory filings.
- Post-trade reporting and fees are required in most provinces, along with potential AML reporting for managers with Canadian activity.

Background

There are various registration, disclosure and filing obligations that exist when selling funds into Canada or providing trading or advisory services to Canadians on an exempt basis. The obligations are not particularly onerous, but failure to comply with them carries the risk of regulatory sanctions in Canada that are likely also reportable to your

home regulator. In this guide, we highlight the key areas that often trip up non-Canadian managers, dealers and advisers.

Securities laws in Canada are regulated at the provincial and territorial level. Accordingly, the requirements set out below must be reviewed and, if applicable, met in each province and territory in which a prospective Canadian investor or client resides. For the most part, these laws are harmonized, however, there are some important nuances that need to be considered if a fund product or a firm's services are marketed to investors in multiple provinces and territories.

The prospectus regime

In Canada, interests in funds are securities. Sales of securities to investors in Canada may only be made, absent an exemption, by way of a prospectus that has been vetted by the applicable Canadian securities regulatory authority. There are ongoing regulatory compliance and reporting requirements applicable to funds that are sold to the general public, as well as to their managers.

Much like in the U.S., there are a variety of exemptions from the prospectus requirement available in Canada that can be used for the private placement of fund products to investors. Most importantly for funds are the exemptions for sales to "accredited investors" (without any minimum purchase requirement) and/or to non-individual investors purchasing securities of a single class or series with an aggregate purchase price of C$150,000 or more. Accredited investors include financial institutions, pension funds, government agencies, various entities and high net worth individuals.

Registration of fund managers and intermediaries – Dealer registration

The marketing of securities in Canada to prospective investors is, broadly speaking, a registrable trading activity for which the entity that is doing the marketing – be it the fund, the fund manager or an intermediary (*e.g.*, a placement agent) – may require registration as a dealer with the applicable securities commission(s), or an exemption therefrom. The manager of the fund that is being marketed in Canada may also become subject to a separate registration requirement in the category of "investment fund manager" as a result of these marketing activities, even if it is not doing the marketing. This is discussed in detail below.

The need for dealer registration in Canada is determined via a "business trigger" test. An entity that is "in the business" of trading in securities must be registered as a dealer (or avail itself of an exemption), or act solely through an agent who is registered or exempt.

Open-ended "investment funds" (or closed-end "investment funds" when in the course of their distribution periods) are often considered to be "in the business" of trading in securities in Canada, and must ensure that they (and their agents) are aware of the dealer registration requirements. An "investment fund" is essentially a commingled vehicle that holds a basket of underlying issuers for passive investment purposes. It does not invest for the purposes of exercising or seeking to exercise control of an issuer

in which it invests or being actively involved in the day-to-day management of such an issuer. Broadly speaking, “investment funds” encompass typical ‘40 Act’ funds, other pooled and hedge funds and UCITS, among others. Venture capital funds, private equity funds and real estate/infrastructure funds would likely not be considered to be “investment funds” under Canadian law and, as such, are not generally deemed to be in the “business of trading” in securities in Canada. However, that does not mean that the manager and/or any intermediaries involved in their marketing in Canada automatically avoid registration. There are various factors that must be examined in each case to determine what parties are caught by the rules – and to what extent.

While the actual distribution of fund interests to an investor in Canada is caught by the definition of “trading” (and generally requires that the distribution be processed through a dealer that is registered or exempt in Canada to transact in such interests), any act, advertisement, solicitation, conduct or negotiation (directly or indirectly) in furtherance of that distribution is also caught. Accordingly, those that participate in the marketing and sale of a fund’s securities to potential investors in Canada must determine whether they trigger the dealer registration requirement in the relevant jurisdictions of Canada. If they do, they must register as a dealer in the applicable jurisdictions (or be exempt from registration) or the fund must be sold through another third party registered dealer, where required.

The most common of these exemptions is the so-called “international dealer exemption” which permits registered foreign dealers (such as, FINRA members) to market, sell and distribute non-Canadian funds to institutional and ultra high net-worth investors in Canada.

It is important that foreign fund managers do not market their funds directly to potential investors in Canada without the involvement of a registered or exempt placement agent where required, unless they themselves are registered or exempt. It may not be enough to bring a registered dealer into the equation for the sole purpose of closing the investment. Involving a dealer of record to “bless” the relevant trade after the marketing and offer have already been initiated does not retroactively cure the lack of required registration at the marketing stage. If relying on the dealer registration/exemption of an intermediary, it will also be important to involve them in the marketing process.

Registration of fund managers and intermediaries – Investment fund manager registration

Another registration requirement that must be examined when selling funds into Canada is whether the entity that directs the business, operations or affairs of an “investment fund” that is marketed and sold in Canada requires registration as an “investment fund manager”. The regime is similar to the Alternative Investment Fund Managers regime in Europe (known as the AIFMD), in that Canada regulates the administrative manager of the fund. In contrast to the AIFMD, Canada has generous exemptions from registration when dealing only with institutional investors.

In three Canadian provinces (Ontario, Québec and Newfoundland & Labrador), simply having a fund investor resident in the province triggers the requirement for the manager of the fund to register as an investment fund manager or to rely on an exemption from the requirement. There are currently only two exemptions from the investment fund

manager registration requirement in the three provinces mentioned above: (i) where neither the manager nor the funds has actively solicited investors in the relevant provinces since Sept. 28, 2012 (or paid any third party to do so), or (ii) where active solicitation has taken place, but the fund is only marketed and sold in the above provinces to investors that qualify as “permitted clients” (essentially, a QIB or QP standard). Reliance on the second exemption requires certain filings be made to the authorities and these must be renewed annually. Additionally, you will be required to pay fees in Ontario and, as of June 22, 2026, in Québec, to maintain the exemption each year.

In the remaining Canadian provinces and territories, foreign managers will typically not trigger the investment fund manager registration requirement.

Registration of fund managers and intermediaries – Adviser registration

Portfolio managers to investment funds must consider whether they require registration as an adviser in Canada. Generally, they do not. This is because, where both the portfolio manager and the fund are domiciled outside of Canada and all portfolio management activities take place outside of Canada, adviser registration is not triggered in Canada. However, advisers outside of Canada who wish to offer their services to Canadian investors through separately managed accounts must either register as an adviser in Canada or rely on an exemption from such registration, for example, the exemptions that are available to “international advisers” or to certain non-resident sub-advisers to registered portfolio managers in Canada, as discussed further below.

Registration of investment advisers – Adviser registration

Firms that are in the business of advising residents of a Canadian province or territory on securities must either register as advisers, in the category of portfolio manager, or, if they qualify, rely on a registration exemption available to “international advisers”. Other exemptions may be available, including where a firm acts as a sub-adviser to a Canadian registered firm. U.S. firms may carry out registrable activity in Canada pursuant to the “international adviser” registration exemption where their activities fit within certain criteria. This registration exemption permits a firm that is registered, or operates under an exemption from registration, in its home jurisdiction as an adviser to carry out specified advising activity in Canada, primarily only with “permitted clients”. The conditions for reliance on this registration exemption include:

- The advice must be given only in respect of foreign (i.e. non-Canadian) securities and not on Canadian securities, unless such advice is incidental to the advice on foreign securities; and
- Not more than 10 per cent of the firm’s consolidated gross revenues (together with that of its unregistered affiliates) can be derived from its advising activities in Canada.

The firm must also provide required notifications to its Canadian clients and the applicable securities regulators before advising Canadian clients. To permit continued reliance on this exemption, annual filings in each applicable province and territory (and in certain jurisdictions, payment of regulatory fees) are required.

Fund disclosure, reporting and filing obligations

Certain pre-and post-closing disclosure and filing obligations apply when selling funds into Canada, especially where an offering document is provided to prospective investors.

There is no requirement in any province or territory of Canada to provide an offering memorandum (OM) or equivalent disclosure document to an investor in connection with the sale of a fund where the prospectus exemptions discussed above are used. However, in most Canadian provinces and territories, where a document that meets the definition of an OM under Canadian securities laws is provided to an investor in connection with the sale of fund units (for example, to an accredited investor), there will be statutory liability for any misrepresentation in that OM. Most foreign offering documents will meet the OM definition. In such cases, a summary of these statutory rights must be provided to the Canadian investor (subject to certain exceptions), which is customarily accomplished through a Canadian supplement or “wrapper” to the OM and/or subscription agreement, so that the non-Canadian documents need not be amended for Canadian investors. The wrapper contains certain representations and warranties that the manager and the fund will want from its Canadian investors, as well as certain disclosures that the fund and/or manager must make to such investors.

In addition, certain provinces and territories require that any OM (and its related wrapper) be filed with the securities regulatory authority in that province or territory after closing. Further, Québec has certain French language requirements that may be applicable when offering products or services to its residents.

Finally, sales of fund units in Canada must typically be reported to the securities regulatory authority in each province and territory in which they were sold by completing a detailed form, similar to a Form D filing. There are filing fees in most provinces and territories, and in certain provinces and territories, late fees may be applicable.

In addition to the above, there may be monthly filings under Canadian anti-money laundering legislation in connection with the manager’s activities in Canada.

Conclusion

This broad outline is intended to give the reader an overall appreciation of the essential elements associated with offering, marketing and selling commingled investment vehicles in Canada, or otherwise providing dealer or investment advisory services to Canadians.

While the rules and requirements in Canada are similar in many respects to those of the United States, they are not identical, and this regulatory process guide will help you maintain positive relationships with regulators – both in Canada and in the United

States. Please contact your usual lawyer in the Investment Management Group or any of the following lawyers to discuss doing business in Canada.

Registrant regulation and compliance services

The investment management industry in Canada is both highly regulated and highly competitive. The requirements are constantly evolving, as are industry players and the demographics and needs of investors. Technology is causing evolution and creating opportunity.

Whether you are looking to set up or acquire an investment fund business in Canada, need help understanding the registration requirements in connection with operating your business, or are looking to enter the Canadian market from abroad, BLG's Investment Management Group understands the business, regulatory and administrative issues that affect you.

With over 60 years' experience and over 40 lawyers across the country, BLG's team is rated by *Chambers Canada* as one of Canada's best law firms for investment funds and asset management. BLG's Investment Management Group is one of the largest groups in Canada ranging from fund structuring, public fund launches, ETFs, closed end funds, private and hedge fund offerings, derivative transactions, bringing international entrants to Canada, registrant regulation, M&A transactions and regulatory policy and developments. Many of our clients have worked with us since their initial start-up.

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