

National Instrument 33-109
Registration Information

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National Instrument 33-109
Registration Information

PART 1 - DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Instrument

“cessation date” means the first day on which an individual ceased to have authority to act as a registered individual on behalf of their sponsoring firm or ceased to be a permitted individual of their sponsoring firm, because of the end of, or a change in, the individual’s employment, partnership, or agency relationship with the firm;

“firm” means a person or company that is registered, or is seeking registration, as a dealer, adviser or investment fund manager;

“Form 33-109F1” means Form 33-109F1 *Notice of Termination of Registered Individuals and Permitted Individuals*;

“Form 33-109F2” means Form 33-109F2 *Change or Surrender of Individual Categories*;

“Form 33-109F3” means Form 33-109F3 *Business Locations other than Head Office*;

“Form 33-109F4” means Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals*;

“Form 33-109F5” means Form 33-109F5 *Change of Registration Information*;

“Form 33-109F6” means Form 33-109F6 *Firm Registration*;

“Form 33-109F7” means Form 33-109F7 *Reinstatement of Registered Individuals and Permitted Individuals*;

“former sponsoring firm” means the registered firm for which an individual most recently acted as a registered individual or permitted individual;

“NI 31-102” means National Instrument 31-102 *National Registration Database*;

“NI 31-103” means National Instrument 31-103 *Registration Requirements and Exemptions*;

“NRD submission number” means the unique number generated by NRD to identify each NRD submission;

“permitted individual” means an individual who is not a registered individual and who is

- (a) a director, chief executive officer, chief financial officer, or chief operating officer of a firm, or who performs the functional equivalent of any of those positions, and
- (b) an individual who has beneficial ownership of, or direct or indirect control or direction over, 10 percent or more of the voting securities of a firm;

“principal jurisdiction” means,

- (a) for a firm whose head office is in Canada, the jurisdiction of Canada in which the firm’s head office is located,
- (b) for an individual whose working office is in Canada, the jurisdiction of Canada in which the individual’s working office is located,
- (c) for a firm whose head office is outside Canada, the jurisdiction of the firm’s principal regulator, as identified by the firm on its most recently submitted Form 33-109F5 or Form 33-109F6, and
- (d) for an individual whose working office is outside Canada, the principal jurisdiction of the individual’s sponsoring firm;

“principal regulator” means, for a person or company, the securities regulatory authority or regulator of the person or company’s principal jurisdiction;

“registered firm” means a registered dealer, registered adviser or registered investment fund manager;

“registered individual” means an individual who is registered under securities legislation to do any of the following on behalf of a registered firm:

- (a) act as a dealer, underwriter or adviser;
- (b) act as a chief compliance officer;
- (c) act as an ultimate designated person;

“sponsoring firm” means,

- (a) for a registered individual, the registered firm on whose behalf the individual acts,
- (b) for an individual applying for registration, the firm on whose behalf the individual will act if the individual’s application is approved,
- (c) for a permitted individual of a registered firm, the registered firm, and

- (d) for a permitted individual of a firm that is applying for registration, the applicant firm.

1.2 Interpretation

Terms used in this Instrument and that are defined in NI 31-102 have the same meanings as in NI 31-102.

PART 2 - APPLICATION FOR REGISTRATION AND REVIEW OF PERMITTED INDIVIDUALS

2.1 Firm Registration

A firm that applies for registration as a dealer, adviser or investment fund manager must submit each of the following to the regulator:

- (a) a completed Form 33-109F6;
- (b) for each business location of the applicant in the local jurisdiction other than the applicant's head office, a completed Form 33-109F3 in accordance with NI 31-102.

2.2 Individual Registration

- (1) Subject to subsection (2) and sections 2.4 and 2.6, an individual who applies for registration under securities legislation must submit a completed Form 33-109F4 to the regulator in accordance with NI 31-102.
- (2) A permitted individual of a registered firm who applies to become a registered individual with the firm must submit a completed Form 33-109F2 to the regulator in accordance with NI 31-102.

2.3 Reinstatement

- (1) An individual who applies for reinstatement of registration under securities legislation must submit a completed Form 33-109F4 to the regulator in accordance with NI 31-102, unless the individual submits a completed Form 33-109F7 in accordance with subsection (2).
- (2) The registration of an individual suspended under section 6.1 [*If individual ceases to have authority to act for firm*] of NI 31-103 is reinstated on the date the individual submits a completed Form 33-109F7 to the regulator in accordance with NI 31-102 if all of the following apply:

- (a) the Form 33-109F7 is submitted on or before the 90th day after the cessation date;
- (b) the individual's employment, partnership or agency relationship with the former sponsoring firm did not end because the individual was asked by the firm to resign, or was dismissed, following an allegation against the individual of any of the following:
 - (i) criminal activity;
 - (ii) a breach of securities legislation;
 - (iii) a breach of a rule of an SRO;
- (c) after the cessation date there have been no changes to the information previously submitted in respect of any of the following items of the individual's Form 33-109F4:
 - (i) item 13 [*Regulatory disclosure*];
 - (ii) item 14 [*Criminal disclosure*];
 - (iii) item 15 [*Civil disclosure*];
 - (iv) item 16 [*Financial disclosure*];
- (d) the individual is seeking reinstatement with a sponsoring firm in the same category of registration in which the individual was registered on the cessation date;
- (e) the new sponsoring firm is registered in the same category of registration in which the individual's former sponsoring firm was registered.

2.4 Application to Change or Surrender Individual Registration Categories

A registered individual who applies for registration in an additional category, or to surrender a registration category, must make the application by submitting a completed Form 33-109F2 to the regulator in accordance with NI 31-102.

2.5 Permitted Individuals

- (1) A permitted individual must submit a completed Form 33-109F4 to the regulator in accordance with NI 31-102, no more than 7 days after becoming a permitted individual, unless the individual submits a Form 33-109F7 in accordance with subsection (2).

- (2) An individual who has ceased to be a permitted individual of a former sponsoring firm and becomes a permitted individual of a new sponsoring firm may submit a completed Form 33-109F7 to the regulator if all of the following apply:
 - (a) the Form 33-109F7 is submitted in accordance with NI 31-102
 - (i) no more than 7 days after becoming a permitted individual of the new sponsoring firm, and
 - (ii) no more than 90 days after the cessation date;
 - (b) the individual holds the same permitted individual status with the new sponsoring firm that they held with the former sponsoring firm;
 - (c) the conditions described in paragraphs (b) and (c) of subsection 2.3(2) are met.

2.6 Commodity Futures Act Registrants

- (1) In Manitoba and Ontario, despite subsection 2.1(b), if a firm applies for registration under section 2.1 and is registered under the *Commodity Futures Act*, the applicant is not required to submit a completed Form 33-109F3 under section 3.2 for any business location of the applicant that is recorded on NRD.
- (2) In Manitoba and Ontario, despite subsection 2.2(1), if an individual applies for registration under securities legislation and is recorded on NRD with his or her sponsoring firm as registered under the *Commodity Futures Act*, the individual must make the application by submitting a completed Form 33-109F2 to the regulator in accordance with NI 31-102.

PART 3 - CHANGES TO REGISTERED FIRM INFORMATION

3.1 Notice of Change to a Firm's Information

- (1) Subject to subsections (3) or (4), a registered firm must notify the regulator of a change to any information previously submitted in Form 33-109F6 or under this subsection, as follows:
 - (a) for a change previously submitted in relation to part 3 of Form 33-109F6, within 30 days of the change;
 - (b) for a change previously submitted in relation to any other part of Form 33-109F6, within 7 days of the change.

- (2) A notice of change referred to in subsection (1) must be made by submitting a completed Form 33-109F5.
- (3) A notice of change is not required under subsection (1) if the change relates to any of the following:
 - (a) a business location other than the head office of the firm if the firm submits a completed Form 33-109F3 under section 3.2;
 - (b) a termination, or a change, of a registered firm's employment, partnership or agency relationship with an officer, partner or director of the registered firm if the firm submits a completed Form 33-109F1 under subsection 4.2(1);
 - (c) the addition of an officer, partner, or director to the registered firm if that individual submits either of the following:
 - (i) a completed Form 33-109F4 under subsection 2.2(1) or 2.5(1);
 - (ii) a completed Form 33-109F7 under subsection 2.3(2) or 2.5(2);
 - (d) the information in the supporting documents referred to in any of the following items of Form 33-109F6:
 - (i) item 3.3 [*Business documents*];
 - (ii) item 5.1 [*Calculation of excess working capital*];
 - (iii) item 5.7 [*Directors' resolution for insurance*];
 - (iv) item 5.13 [*Audited financial statements*];
 - (v) item 5.14 [*Letter of direction to auditors*].
- (4) A person or company that submitted a completed Schedule B [*Submission to Jurisdiction and Appointment of Agent for Service*] to Form 33-109F6 must notify the regulator of a change to the information previously submitted in item 3 [*Name of agent for service of process*] or item 4 [*Address for service of process on the agent for service*] of that schedule by submitting a completed Schedule B no more than 7 days after the change;
- (5) Subsection (4) does not apply to a person or company after they have ceased to be registered for a period of 6 years or more.
- (6) For the purpose of subsections (2) and (4), the person or company may give the notice by submitting it to the principal regulator.

3.2 Changes to Business Locations

A registered firm must notify the regulator of the opening of a business location, other than a new head office, or of a change to any information previously submitted in Form 33-109F3, by submitting a completed Form 33-109F3 to the regulator in accordance with NI 31-102, within 7 days of the opening of the business location or change.

PART 4 - CHANGES TO REGISTERED INDIVIDUAL AND PERMITTED INDIVIDUAL INFORMATION

4.1 Notice of Change to an Individual's Information

- (1) Subject to subsection (2), a registered individual or permitted individual must notify the regulator of a change to any information previously submitted in respect of the individual's Form 33-109F4 as follows:
 - (a) for a change of information previously submitted in items 4 [*Citizenship*] and 11 [*Previous employment*] of Form 33-109F4, within 30 days of the change;
 - (b) for a change of information previously submitted in any other items of Form 33-109F4, within 7 days of the change.
- (2) A notice of change is not required under subsection (1) if the change relates to information previously submitted in item 3 [*Personal information*] of Form 33-109F4.
- (3) A notice of change under subsection (1) must be made by submitting a completed Form 33-109F5 to the regulator in accordance with NI 31-102.
- (4) Despite subsection (3), a notice of change referred to in subsection (1) must be made by submitting a completed Form 33-109F2 to the regulator in accordance with NI 31-102 if the change relates to
 - (a) an individual's status as a permitted individual of the sponsoring firm, or
 - (b) a registered individual's status as an officer, partner, director or shareholder of the sponsoring firm.

4.2 Termination of Employment, Partnership or Agency Relationship

- (1) A registered firm must notify the regulator of the end of, or a change in, a sponsored individual's employment, partnership, or agency relationship with the firm if the individual ceases to have authority to act on behalf of the firm as a

registered individual or permitted individual by submitting a Form 33-109F1 to the regulator in accordance with NI 31-102 with

- (a) items 1 through 4 completed, and
 - (b) item 5 completed unless the reason for termination under item 4 was death or retirement of the individual or the completion or expiry of an employment or agency contract.
- (2) A registered firm must submit to the regulator the information required under
- (a) subsection (1)(a), within 7 days of the cessation date, and
 - (b) subsection (1)(b), within 30 days of the cessation date.
- (3) A person or company must, within 7 days of a request from an individual for whom the person or company was the former sponsoring firm, provide to the individual a copy of the Form 33-109F1 that the person or company submitted under subsection (1) in respect of that individual.
- (4) If a person or company completed and submitted the information in item 5 of a Form 33-109F1 in respect of an individual who made a request under subsection (3) and that information was not included in the initial copy provided to the individual, the person or company must provide to that individual a further copy of the completed Form 33-109F1, including the information in item 5, within the later of
- (a) 7 days after the request by the individual under subsection (3), and
 - (b) 7 days after the submission pursuant to subsection (2)(b).

PART 5 - DUE DILIGENCE AND RECORD-KEEPING

5.1 Sponsoring Firm Obligations

- (1) A sponsoring firm must make reasonable efforts to ensure the truth and completeness of information that is submitted in accordance with this Instrument for any individual.
- (2) A sponsoring firm must obtain from each individual who is registered to act on behalf of the firm, or who is a permitted individual of the firm, a copy of the Form 33-109F1 most recently submitted by the individual's former sponsoring firm in respect of that individual, if any, within 60 days of the firm becoming the individual's sponsoring firm.

- (3) A sponsoring firm must retain all documents used by the firm to satisfy its obligation under subsection (1),
 - (a) in the case of a registered individual, for no less than 7 years after the individual ceases to be registered to act on behalf of the firm,
 - (b) in the case of an individual who applied for registration but whose registration was refused by the regulator, for no less than 7 years after the individual applied for registration, or
 - (c) in the case of a permitted individual, for no less than 7 years after the individual ceases to be a permitted individual with the firm.
- (4) Without limiting subsection (3), if a registered individual, an individual applying for registration, or a permitted individual appoints an agent for service, the sponsoring firm must keep the original Appointment of Agent for Service executed by the individual for the period of time set out in paragraph (3)(b).
- (5) A sponsoring firm that retains a document under subsection (3) or (4) for an NRD submission must record the NRD submission number on the first page of the document.

PART 6 - TRANSITION

6.1 All Registered Firms to File Form 33-109F6 – September 30, 2010

A registered firm that was registered before this Instrument came into force must submit a completed Form 33-109F6 to the regulator on or before September 30, 2010.

6.2 Notice of Change for Firms Registered before September 28, 2009

- (1) In this section, “Form 3” means the form that a firm submitted before this Instrument came into force to apply for registration as a dealer, adviser or underwriter in the jurisdiction that, at the time the application was made, would have been the firm’s principal jurisdiction under this Instrument.
- (2) Subject to subsection (5), a registered firm that was registered in a jurisdiction of Canada before this Instrument came into force and that has not submitted a completed Form 33-109F6 to the regulator, must notify the regulator of a change to any information previously submitted
 - (a) in a notice of agent and address for service, by submitting to the regulator a completed Schedule B to Form 33-109F6, no more than 7 days after the change;

- (b) in Form 3 or in any notice of change to information in that form submitted to the regulator, as follows:
 - (i) for a change of information equivalent to the information referred to in part 3 of Form 33-109F6, within 30 days of the change;
 - (ii) for a change of information equivalent to the information referred to in any other part of Form 33-109F6, within 7 days of the change.
- (3) A registered firm referred to in subsection (2) must notify the regulator of a change in its auditor or financial year-end within 7 days of the change.
- (4) For the purpose of subsections (2) and (3) the firm may give the notice by submitting it to the principal regulator.
- (5) A notice of change is not required under subsection (2) if the change relates to any of the following:
 - (a) the addition of an officer, partner, or director to the registered firm if that individual
 - (i) submits a completed Form 33-109F4 under subsection 2.2(1) or 2.5(1), or
 - (ii) submits a completed Form 33-109F7 under subsection 2.3(2) or 2.5(2);
 - (b) a termination, or a change, of a registered firm's employment, partnership or agency relationship with an officer, partner or director of the registered firm if the firm submits a completed Form 33-109F1 under subsection 4.2(1);
 - (c) a business location other than the head office of the firm if the firm submits a completed Form 33-109F3 under section 3.2;
 - (d) information equivalent to the information referred to in section 3.1(3)(d).

6.3 National Registration Database Transition Period

- (1) In this section, "NRD access date" means the first day following September 25, 2009 that an NRD filer has access to NRD to make NRD submissions.
- (2) A notice submitted by an NRD filer before September 25, 2009, and not accepted or denied by the regulator by that date must be resubmitted, as if the time required for the submission had fallen within the period commencing on September 25,

2009 and ending on the day before the NRD access date, in accordance with subsections (3), (4) and (6) as applicable.

- (3) Except in the case of a notice referred to in subsection (4), if the time required for making either of the following submissions falls within the period commencing on September 25, 2009 and ending on the day before the NRD access date, the time for making the submission is extended to the 45th day following the NRD access date:
 - (a) a notice that is required to be submitted in NRD format;
 - (b) a Form 33-109F4 that is required to be submitted under subsection 2.5(1).
- (4) If the time required for making either of the following submissions falls within the period commencing on September 25, 2009 and ending on the day before the NRD access date, the submission must be made other than through the NRD website:
 - (a) a notice of change referred to in subsection 4.1(1) from a registered individual, if the change relates to previously submitted information about any of the following items of the individual's Form 33-109F4:
 - (i) item 14 [*Criminal disclosure*];
 - (ii) item 15 [*Civil disclosure*];
 - (iii) item 16 [*Financial disclosure*];
 - (b) a notice of termination referred to in subsection 4.2(1) from a former sponsoring firm, within the time required under subsection 4.2(2), if the individual's employment, partnership or agency relationship with the firm ended because the individual resigned or was dismissed for cause.
- (5) From September 28, 2009 to the day before the NRD access date, an individual may submit any of the following to the regulator other than through the NRD website:
 - (a) Form 33-109F7;
 - (b) Form 33-109F2;
 - (c) Form 33-109F4 other than under subsection 2.5(1).
- (6) If an NRD filer makes a submission other than through the NRD website under subsection (4) or (5), the NRD filer must resubmit the information in NRD format to the regulator as follows:

- (a) for a Form 33-109F7 submitted under paragraph (5)(a),
 - (i) if the cessation date was on or after September 28, 2009, by submitting a completed Form 33-109F7 no later than 30 days after the NRD access date;
 - (ii) if the cessation date was before September 28, 2009, by submitting a completed Form 33-109F4 no later than 30 days after the NRD access date;
- (b) for any other submission, no later than 30 days after the NRD access date.

6.4 Transition – Reinstatement under Subsections 2.3(2) and 2.5(2)

- (1) Despite subsection 2.3(2), from the NRD access date to December 28, 2009 an individual who seeks reinstatement of registration under subsection 2.3(2) must submit a completed Form 33-109F4 to the regulator in accordance with NI 31-102, if the cessation date occurred before September 28, 2009.
- (2) For greater certainty, the registration of an individual who makes a submission under subsection (1) is reinstated in accordance with subsection 2.3(2) only if all of the conditions in paragraphs (a) through (e) of subsection 2.3(2) are met.
- (3) Subsection 2.5(2) does not apply to a permitted individual whose cessation date occurred before September 28, 2009.

PART 7 - EXEMPTION

7.1 Exemption

- (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.
- (3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions*, opposite the name of the local jurisdiction.

PART 8 - REPEAL AND EFFECTIVE DATE

8.1 Repeal

National Instrument 33-109 *Registration Information*, which came into force on February 14, 2003, is repealed.

8.2 Effective Date

This Instrument comes into force on the day National Instrument 31-103 *Registration Requirements and Exemptions* comes into force.

[Amended September 28, 2009]