

Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 OSC Staff Notice 81-725 – Recent Amendments to Part XXI Insider Trading and Self-Dealing of the Securities Act (Ontario) – Transition Issues

OSC STAFF NOTICE 81-725

RECENT AMENDMENTS TO PART XXI INSIDER TRADING AND SELF-DEALING OF THE SECURITIES ACT (ONTARIO) – TRANSITION ISSUES

Purpose

This notice provides the views of Ontario Securities Commission staff on questions that have been raised regarding certain amendments to the *Securities Act* (Ontario) (the Act) included in the 2014 Ontario Budget Bill which received Royal Assent on July 24, 2014 (the Amendments).

Background

Part XXI of the Act, *Insider Trading and Self-Dealing*, contains conflict of interest investment restrictions which, until July 24, 2014, only applied to mutual funds. The Amendments extend the conflict of interest investment restrictions to all investment funds, so that they apply to non-redeemable investment funds and mutual funds. While there are certain structural differences between different types of investment funds, in staff's view these differences do not support differential treatment with respect to the conflict of interest investment restrictions.

Some questions have been raised about the application of Part XXI to non-redeemable investment funds and about the impact of the Amendments on the existing requirements for mutual funds in Ontario.

Staff's Views on Transition Issues

Grandfathering Provisions

One question that has been raised is whether the Amendments require mutual funds to divest investments previously made in compliance with section 111 of the Act as it read prior to July 24, 2014. With respect to mutual funds that have always been subject to Part XXI of the Act, the Amendments were not, in staff's view, intended to have any effect. The Amendments include grandfathering provisions in subsections 111(3) and (4) which staff read as intending to allow mutual funds to not have to divest any investments made prior to July 24, 2014. The grandfathering provisions also permit investment funds newly caught by Part XXI of the Act to continue to hold any investments made prior to July 24, 2014. However, going forward, related investment funds will have to consider their combined aggregate position in a particular investment when determining whether any further investment is permitted.

Another question staff have been asked is how an existing non-redeemable investment fund can comply with section 115. This provision prohibits an investment fund from engaging in certain related-party transactions unless specific disclosure is made in the investment fund's prospectus. However, most existing non-redeemable investment funds will not have made the prospectus disclosure and are unable to do so since they no longer have a current prospectus. In staff's view, the Amendments are forward-looking from July 24, 2014 and intended to apply only to non-redeemable investment funds that file a preliminary prospectus, a prospectus or an amendment to a prospectus on or after July 24, 2014.

Connection to NI 81-102

Staff have received inquiries about the connection between the Amendments and National Instrument 81-102 *Mutual Funds* (NI 81-102). NI 81-102 currently applies to mutual funds only, but, pursuant to final amendments published June 19, 2014 (the Modernization Rules), effective September 22, 2014, NI 81-102 will also apply to non-redeemable investment funds. Where a provision of NI 81-102 impacts a provision of the Amendments, staff's intention was that the Amendments be read in conjunction with NI 81-102, including the transition periods provided in NI 81-102.

Some of the conflict of interest investment restrictions that have been extended to all investment funds by the Amendments are also contemplated in NI 81-102. "Fund on fund" investing is one example. The conflict of interest investment restrictions in the Act have been extended to restrict a non-redeemable investment fund from investing in a related investment fund in certain situations. Section 2.5 of NI 81-102, which also governs fund on fund investing, provides an exemption from those restrictions. However, pursuant to the Modernization Rules, section 2.5 of NI 81-102 will not apply to non-redeemable investment funds that filed a prospectus on or before September 22, 2014 until March 21, 2016. Staff are of the view that, with respect to fund on fund investing, existing non-redeemable investment funds may avail themselves of this transition period provided in the Modernization Rules.

Staff remind investment fund issuers that the Amendments do, however, prohibit certain types of investments by all investment funds after July 24, 2014, and create new conflict of interest reporting requirements for non-redeemable investment funds. The application of the Amendments to related-party or self-dealing transactions involving investment funds should be carefully considered. In some cases, the transactions may be contemplated by National Instrument 81-107 *Independent Review Committee for Investment Funds*, so the requirements and exemptions in this rule should also be considered.

Further Information

Investment funds and their counsel are encouraged to contact staff in the Investment Funds and Structured Products Branch with any further questions relating to the application of the Amendments.

Questions may be referred to:

Carina Kwan
Legal Counsel, Investment Funds and
Structured Products Branch
Ontario Securities Commission
416-593-8052
ckwan@osc.gov.on.ca

Vera Nunes
Manager, Investment Funds and
Structured Products Branch
Ontario Securities Commission
416-593-2311
vnunes@osc.gov.on.ca

August 1, 2014