

Since the Canadian Securities Administrators (CSA) published CSA Staff Notice 31-317 Reporting Obligations Related to Terrorist Financing for Registrants, Exempt International Dealers, and Exempt International Advisers on April 16, 2010 (the Notice), CSA staff have been receiving questions as to whether federal monthly reporting and other requirements relating to terrorist financing and United Nations sanctions apply to entities in the business of dealing or advising in securities who avail themselves of registration exemptions other than exempt international dealers and exempt international advisers. Under sections 8.18 and 8.26 of National Instrument 31-103 Registration Requirements and Exemptions (NI 31-103), international dealers and international advisers (as defined in NI 31-103) transitioned in certain CSA jurisdictions from registered firms to firms doing business pursuant to registration exemptions. In the Notice, the CSA made clear its expectation that newly exempted international dealers and international advisers would continue to comply with any applicable federal provisions relating to terrorist financing and United Nations sanctions. The Notice also sets out CSA staff's view on the mechanics of complying with the reporting requirements contemplated by the specified federal law.

The reporting obligations set out in section 83.11 of the Criminal Code of Canada (the Criminal Code) apply to entities "authorized under provincial legislation to engage in the business of dealing in securities, or to provide portfolio management or investment counselling services." The language in the Criminal Code does not limit the scope of these federal provisions to registered firms.

Accordingly, the Notice and the corresponding consolidated CSA reporting form have been revised to clarify that the CSA expects exempt dealers and exempt advisers, provided that they engage in the business of "dealing in securities" or "providing portfolio management or investment counselling services" in any CSA jurisdiction, to comply with any applicable federal provisions relating to terrorist financing and United Nations sanctions.

CSA STAFF NOTICE 31-317 (Revised)

Reporting Obligations Related to Terrorist Financing

July 30, 2010

The Canadian Securities Administrators (CSA) are issuing this Staff Notice regarding monthly reporting and other requirements relating to terrorist financing and United Nations Act sanctions on certain countries under the:

- *Criminal Code of Canada*
- *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism*
- *United Nations Al-Qaida and Taliban Regulations*
- *Regulations Implementing the United Nations Resolution on the Democratic People's Republic of Korea*
- *Regulations Implementing the United Nations Resolution on Iran*

While this Staff Notice reflects CSA staff views on the application of this federal law, those potentially affected by the federal law are advised to seek legal advice on the matters dealt with by this Notice.

The CSA are issuing this Notice for the following purposes:

- to provide registrants, entities engaging in the business of “dealing in securities” pursuant to exemptions from the dealer registration requirement (**exempt dealers**) and entities engaging in the business of providing “portfolio management or investment counselling services” pursuant to exemptions from the adviser registration requirement (**exempt advisers**) with information on the new consolidated reporting form that will be used by each principal regulator,
- to provide information regarding the submission of monthly reports and advise registrants, exempt dealers and exempt advisers that the report may be filed with the principal regulator by e-mail, and
- to provide summary information on the laws which impose the monthly reporting requirements on registrants, exempt dealers and exempt advisers.

In a number of cases, the federal law requires reports to be made to a “principal agency or body” supervising a person or entity. In the case of a registrant, CSA staff consider that this reference corresponds to a “principal regulator” for securities purposes. While the federal law is not specific on this point, for convenience CSA staff advise exempt dealers and exempt advisers to make these reports to the jurisdiction in Canada where most of their clients reside. In this Staff Notice, such a regulator is also referred to as a “principal regulator”.

Note: This notice provides summary information only and reflects information as of the date set out above. Please refer to the text of the laws set out above for a complete description of your obligations.

Types of reporting

Registrants, exempt dealers and exempt advisers have certain obligations under federal laws. These include requirements for “persons and entities authorized under provincial legislation to engage in the business of dealing in securities, or to provide portfolio management or investment advising services” to provide specified monthly reports to the principal agency or body that supervises or regulates the registrant, exempt dealer or exempt adviser under federal or provincial law. The regulator, in turn, forwards information derived from these reports to the Office of the Superintendent of Financial Institutions (OSFI). Further information on these laws and the reporting obligations can be found on the OSFI website at: <http://www.osfi-bsif.gc.ca>.

There are two types of reporting to their principal regulator required of registrants, exempt dealers and exempt advisers:

- reporting against names listed under federal laws relating to terrorist financing
- reporting against names listed under federal laws relating to United Nations sanctions.

These were previously addressed by several CSA jurisdictions in two separate reporting forms. We have now consolidated these two types of reports into a single form that can be used for reporting by e-mail to the appropriate CSA member (i.e., the principal regulator).

Overview of the applicable laws

Terrorist financing

Registrants, exempt dealers and exempt advisers are subject to requirements under federal laws that, among other things, address the financing of terrorism and permit the listing of persons and entities in respect of which registrants, exempt dealers and exempt advisers (and others) must report dealings. Canada now has three mechanisms for designating individuals and entities as terrorists or terrorist organizations:

- *Criminal Code* of Canada (Criminal Code)
- *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism*, SOR/2001-360 (UN SupTerror) (formerly, the *United Nations Suppression of Terrorism Regulations*) (Old UN SupTerror)
- *United Nations Al-Qaida and Taliban Regulations*, SOR/99-444 (UN Al-Qaida) (formerly, the *United Nations Afghanistan Regulations*) (Old UN Al-Qaida)

In 2006, the federal government amended the regulations referred to above to ensure, among other things, that they correspond more closely to each other and to the requirements in the *Criminal Code*. This is set out in more detail in the regulatory impact analysis statement that accompanied the publication of the amendments in the *Canada Gazette* on July 12, 2006. For further details, please refer to the *Canada Gazette* website at <http://www.gazette.gc.ca> for July 12, 2006.

Generally, these amendments did not materially change the specific names and entities that were previously designated under the *Criminal Code* and the Old UN SupTerror and Old UN Al-Qaida. Names subject to the regulations made under the *Criminal Code* and those names subject to the UN SupTerror and the UN Al-Qaida have been combined into the lists currently posted on the OSFI website at <http://www.osfi-bsif.gc.ca>.

United Nations Act sanctions

In addition to the regulations referred to above, the government has enacted the:

- *Regulations Implementing the United Nations Resolution on the Democratic People's Republic of Korea* (UN NKorea), SOR/2006-287 (November 9, 2006)

- *Regulations Implementing the United Nations Resolution on Iran* (UN Iran), SOR/2007-44 (February 22, 2007)

The UN NKorea were published in Part II of the Canada Gazette on November 29, 2006 and the UN Iran were published in Part II of the Canada Gazette on March 7, 2007: <http://www.gazette.gc.ca>

Among other things, the UN NKorea and the UN Iran impose similar prohibitions, searching obligations and monthly reporting requirements with respect to designated persons, as are contained in the *Criminal Code*, the UN SupTerror and the UN Al-Qaida. For more information, please refer to the November 29, 2006 and the February 27, 2007 supervisory advisory letters from OSFI at: <http://www.osfi-bsif.gc.ca>

Please note that the lists of designated persons for the UN Iran and the UN NKorea are available on the OSFI website at: <http://www.osfi-bsif.gc.ca> . The lists can also be found at the annex to United Nations Security Council Resolution 1737 (2006), which is at: <http://www.un.org>

Overview of certain duties

The duties imposed under the laws referred to above may include the following:

Duty to review and make filings

Under section 83.11 of the *Criminal Code*, section 7 of the UN SupTerror, section 5.1 of the UN Al-Qaida, section 11 of the UN Iran and section 11 of the UN NKorea:

- you must review your records on a continuing basis to determine whether you are in possession or control of property owned or controlled by or on behalf of a designated person and report your findings on a monthly basis
- if you determine that none of your clients are designated persons you are still required to report to your principal regulator that you have a *Nil* response. The term “designated person” in this Notice includes listed entities under the *Criminal Code*, listed persons under the UN SupTerror and those persons and entities covered by the UN Al-Qaida, the UN Iran and the UN NKorea.)

Reports are to be provided on the 14th day of each month, to your principal regulator. A senior officer of the firm, preferably the Chief Compliance Officer, should sign the monthly report.

As noted above, the OSFI website contains updated consolidated lists of designated persons for purposes of the *Criminal Code*, the UN SupTerror and the UN Al-Qaida. OSFI has also made available a listing of designated persons under the UN Iran and the UN NKorea. These lists are available in downloadable and printable formats.

Please refer to the updated lists on the OSFI website prior to completing each report. Please also note that OSFI amends its lists from time to time, as a result of corrections made by the United Nations Security Council (UNSC) to the list of designated persons, even though such changes have not been specifically highlighted by the UNSC. Because of the nature of these amendments, it is not practical for OSFI to identify them in detail.

Therefore, it is important that registrants, exempt dealers and exempt advisers download the consolidated lists periodically; OSFI recommends that this be done on a monthly basis.

Freezing property

Under section 83.08 of the Criminal Code, section 4 of the UN SupTerror, sections 4 and 4.1 of the UN Al-Qaida, section 9 of the UN Iran and section 9 of the UN NKorea, no person in Canada and no Canadian outside Canada shall knowingly:

- deal, directly or indirectly, with property of a designated person
- enter into or facilitate, directly or indirectly, any transaction in respect of such property
- provide any financial or other services in respect of such property.

In addition, section 4 of the UN SupTerror, sections 4 and 4.1 of the UN Al-Qaida, section 9 of the UN Iran and section 9 of the UN NKorea prohibit making any property or any other financial or other related service available to or for the benefit of a designated person. Consequently, any property held directly or indirectly on behalf of a designated person must be held or be frozen.

We note that OSFI has indicated that these prohibitions extend to the debiting of service charges and crediting of interest and/or if the frozen property is a securities portfolio, the crediting of interest, dividends or other entitlements and the charging of custodial fees, transaction fees or any other debits or credits to the account: see the “Special Comments” in OSFI’s November 30, 2006 reminder letter re monthly reporting, which can be found on the OSFI website at the link set out above.

Duty to disclose

Under section 83.1 of the *Criminal Code*, section 8 of the UN SupTerror, section 5.2 of the UN Al-Qaida, section 12 of the UN Iran and section 12 of the UN NKorea, every person in Canada and every Canadian outside Canada must forthwith report to both the RCMP and CSIS any property held for any designated person and any information about transactions or proposed transactions with respect to that property. Information may be provided to these organizations as follows:

- **RCMP**
Anti-terrorist Financing Group
Unclassified fax: (613-993-9474)
- **CSIS Financing Unit**
Unclassified fax: (613) 231-0266

In addition, under section 7.1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, persons and entities reporting to the RCMP and CSIS that are also reporting entities under that section are required to submit a terrorist property report to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).

For instructions relating to the preparation and submission of this report, reporting entities should visit the FINTRAC website at: <http://www.fintrac-canafe.gc.ca>

New consolidated reporting form

The CSA regulators have revised their previous reporting forms to create a new CSA consolidated form. In addition, in order to keep reporting requirements to the principal regulator as streamlined as possible we have also changed the reporting process to allow for the new form to be submitted to the principal regulator by e-mail. Members of the Investment Industry Regulatory Organization of Canada (IIROC) are requested to use the appropriate reporting forms issued by, and file those forms with, IIROC.

Registrants, exempt dealers and exempt advisers should file only one monthly consolidated report in respect of the laws relating to both terrorist financing and United Nations Act sanctions, even though names may be listed under several or all of the laws referred to above.

Registrants, exempt dealers and exempt advisers should use the new reporting form and submit their report to their principal regulator by e-mail.

The new consolidated CSA reporting form for registrants, exempt dealers and exempt advisers to use in complying with their monthly reporting obligations under the Criminal Code, UN SupTerror, the UN Al-Qaida, the UN NKorea and the UN Iran is available on the websites of the CSA regulators.

Please refer to the attached Appendix A for the website address of your principal regulator (please complete the form, print it, and have it signed by the appropriate individual before you scan it for e-mailing to your principal regulator).

The e-mail address for submitting your report to your principal regulator is listed in the attached Appendix A. If you have any questions about these requirements, you can contact your principal regulator at the telephone number or e-mail address listed in the Appendix A.

Note: This Notice provides summary information only. Please refer to the text of the laws set out above for a complete description of your obligations. Some of the laws referred to above also contain certain additional prohibitions and obligations regarding dealings with persons in certain countries. You should read the laws carefully for a complete description of the applicable obligations.

In addition, there are other federal regulations that may be applicable to registrants, exempt dealers and exempt advisers that include searching, monitoring, asset freezing and reporting obligations with respect to designated persons (as defined in the respective regulations). In the case of reporting obligations under some of these other regulations, you must report to the RCMP, rather than to your principal regulator.

Registrants, exempt dealers and exempt advisers should continue to monitor the notices from OSFI for any new regulations that may come into effect regarding similar obligations, or updates to existing obligations to search, monitor and report. You may want to visit the OSFI website <http://www.osfi-bsif.gc.ca> for the purpose of familiarizing yourself with the reporting requirements and any other obligations. In addition, we encourage you to subscribe to the notification service on the OSFI website <http://www.osfi-bsif.gc.ca> in order to receive new updating e-mail notices and reminders concerning new developments and reporting requirements.

Appendix A
List of CSA Regulators E-mail Addresses, Websites, and inquiry details
for Monthly Reporting

(Please send the reports to the e-mail address of your
principal regulator only -- Attention: UN Reports)

Alberta

Alberta Securities Commission
Web: www.albertasecurities.com
Questions: registration@asc.ca
E-mail to: unreports@asc.ca

British Columbia

British Columbia Securities
Commission
Web: www.bcsc.bc.ca
Questions: 604 899-6667
E-mail to: mstreport@bcsc.bc.ca

Manitoba

The Manitoba Securities
Commission
Web: www.msc.gov.mb.ca
Questions: 204-945-5195 or
paula.white@gov.mb.ca
e-mail to: unreports@gov.mb.ca

New Brunswick

New Brunswick Securities
Commission
Web: www.nbsc-cvmnb.ca
Questions: 506 658 3060
E-mail to: nrs@nbsc-cvmnb.ca

Newfoundland and Labrador

Securities NL
Financial Services Regulation
Division
Department of Government
Services
Web: www.gs.gov.nl.ca
Questions: 709 729-0959
Email to: scon@gov.nl.ca

Nova Scotia

Nova Scotia Securities
Commission
Web: www.gov.ns.ca/nssc/
Questions: 902 424-4592
E-Mail to:
MURPHYBW@gov.ns.ca

Northwest Territories

Government of the Northwest Territories
Office of Superintendent of Securities
Department of Justice
Web: www.justice.gov.nt.ca/SecuritiesRegistry
Questions: 867 920- 3318
E-Mail to: SecuritiesRegistries@gov.nt.ca

Nunavut

Government of Nunavut
Office of Superintendent of Securities
Department of Justice
Web: www.justice.gov.nu.ca
Questions: 867 975-6590
E-mail to: theffernan@gov.nu.ca
or CorporateRegistrations@gov.nu.ca

Ontario

Ontario Securities Commission
Web: www.osc.gov.on.ca
Questions: 416 593-8314 or 1-877-785-1555
E-mail to: UNReports@osc.gov.on.ca

Prince Edward Island

Superintendent of Securities
Office of the Attorney General
Web: www.gov.pe.ca/securities
Questions: 902 368-4542
E-mail to: kptummon@gov.pe.ca

Québec

Autorité des marchés financiers
Web: www.lautorite.qc.ca
Questions: 1 877 525-0337 Ext 4755
E-mail to: rapportsterrorisme@lautorite.qc.ca

Saskatchewan

Saskatchewan Financial Services Commission
Web: www.sfsc.gov.sk.ca
Questions: 306 787-9397
E-mail to: registrationsfsc@gov.sk.ca

Yukon

Department of Community Services Yukon
Corporate Affairs (C-6)
Superintendent of Securities
Web: www.community.gov.yk.ca/corp/secureinvest.html
Questions: 867 667-5225
E-mail to: corporateaffairs@gov.yk.ca