

MEMORANDUM

Exempt Market Dealer: Registrant Requirements under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“NI 31-103”)
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Requirement to Register and Permitted Activities – Exempt Market Dealer

Generally, under NI 31-103, the requirement to register as an exempt market dealer is based on a “business trigger” of any firm or individual being “in the business of trading in securities” that are issued pursuant to a prospectus exemption in a jurisdiction in Canada. In determining the requirement to register, Canadian securities regulators examine the activities carried out by a firm or individual that may involve dealing or advising in securities and whether such activities are carried out for a business purpose to determine if an individual or firm must register. One of the factors regulators consider relevant in determining whether activities are carried out for a business purpose include, among others, is directly or indirectly carrying on the activity in question with repetition, regularity or continuity. In the context of an issuer trading in its own securities which may be required to register, if that issuer’s business plan contemplates business activities which involve trading in its own securities on a regular or continuous basis, the issuer will likely be determined to be “in the business of trading in securities”, and required to register as a securities dealer.

Exempt market dealers are permitted, under paragraph 7.1(2)(d) of NI 31-103, to:

- a) act as a dealer by trading a security that is distributed under an exemption from the prospectus requirement, whether or not a prospectus was filed in respect of the distribution;
- b) trade in a security, if the trade is not a distribution, an exemption from a prospectus requirements would be available if the trade were a distribution, and the class of security is not listed or quoted on a marketplace; and
- c) act as an underwriter in respect of a distribution of securities that is made under an exemption from the prospectus requirements.

Registration Requirements – Exempt Market Dealer*A. Individual Registration Categories and Proficiency Requirements*Ultimate Designated Person

The Chief Executive Officer of a firm registrant is designated as the Ultimate Designated Person (the “UDP”) responsible for promoting compliance and supervising the activities of the firm that are directed towards ensuring compliance with applicable securities legislation. There are no proficiency requirements for an UDP.

Chief Compliance Officer

Each firm registered as an exempt market dealer must appoint a Chief Compliance Officer (the “CCO”) responsible for establishing and maintaining policies and procedures for assessing compliance with

applicable securities legislation and for day to day monitoring of adherence to policies and procedures. CCOs must report at least annually to the board of directors of the firm.

CCO's are required to meet the following minimum proficiency requirements:

- i. (A) have earned a Chartered Financial Analyst Charter (a "CFA") or professional designation as a lawyer, Chartered Accountant, Certified General Accountant, Certified Management Accountant, a notary in Quebec, or the equivalent in a foreign jurisdiction, AND (B) if the individual has not earned the CFA Charter, passed the Canadian Securities Course Exam; AND (C) passed *either* the Officers', Partners and Directors Exam administered by the Investment Funds Institute of Canada *or* the Partners, Directors *or* Senior Officers Course Exam administered by CSI Global Education Inc. (each, herein referred to as the "PDO Exam") AND (D) *either* have gained 36 months of relevant securities experience while working at an investment dealer, portfolio manager or an investment fund manager, *or* provided professional services in the securities industry for 36 months and worked at a registered dealer, portfolio manager or investment fund manager for 12 months; OR
- ii. (A) passed the Canadian Securities Course Exam C; AND (B) passed the PDO Exam, AND (C) have *either* worked at an investment dealer or registered portfolio manager for 5 years, including 36 months in a compliance capacity *or* worked for 5 years at a Canadian financial institution in a compliance capacity relating to portfolio management and also worked at a registered dealer or registered advisor for 12 month; OR
- iii. (A) passed the PDO Exam AND (B) *either*:
 - (a) (A) have earned a CFA AND (B) have 12 months relevant investment management experience in the 36-month period before applying for registration; *or*
 - (b) (A) have the Canadian Investment Manager designation through the Canadian investment manager program administered by CSI Global Education Inc. AND (B) 48 months of relevant investment management experience, 12 months of which was in the 36 month period before applying for registration; OR
- iv. (A) passed the PDO Exam AND (B) *either* the Canadian Securities Course Exam *or* Exempt Market Products Exam, AND (C) gained 12 months of relevant securities industry experience in the 36-month period before applying for registration.

The regulator may grant an exemption from any of the education and experience requirements in if it is satisfied that an individual has qualifications or relevant experience that is equivalent to, or more appropriate in the circumstances than, the prescribed requirements.

Dealing Representative

An individual representative that meets the requisite proficiency requirements may be registered as a "Dealing Representative" and may act on behalf of the exempt market dealer.

Requisite proficiency requirements for a Dealing Representative are as follows:

- i. passed the Canadian Securities Course Exam; OR
- ii. passed the Exempt Market Products Exam; OR

- iii. (A) have earned a CFA AND (B) have 12 months relevant investment management experience in the 36-month period before applying for registration; OR
- iv. (A) have the Canadian Investment Manager designation through the Canadian investment manager program administered by CSI Global Education Inc. AND (B) 48 months of relevant investment management experience, 12 months of which was in the 36 month period before applying for registration.

Permitted Individual

In addition, each individual forming part of the “mind and management” of the firm (directors, officers, control block holders) that are not involved in providing securities advice on behalf of the firm are required to register as a “Permitted Individual”. There are no proficiency requirements for Permitted Individuals.

B. Capital Requirements

Minimum working capital for an exempt market dealer not also registered in another category is \$50,000. If a firm is registered in more than one category (ie: if in addition to being registered as an exempt market dealer, it also is required to register as an advisor or investment fund manager), it must meet the highest capital requirement of its categories of registration. An example would be a firm that is registered as an exempt market dealer and also as an investment fund manager. In this circumstance, the minimum working capital would be that of an investment fund manager, which requires a minimum working capital of \$100,000.

C. Insurance

Exempt market dealers must maintain bonding or insurance in respect of each enumerated clause (i.e. Fidelity, On Premises, In Trust, Forgery or Alterations, and Securities) and in the highest of the following amounts for each clause: (a) \$50,000 per employee, agent and Dealing Representative or \$200,000, *whichever is less*; (b) 1% of assets under management that the exempt market dealer holds or has access to, or \$25,000,000, *whichever is less*; or (c) 1% of the exempt market dealer’s total assets, or \$25,000,000, *whichever is less*; or (d) the amount determined to be appropriate by a resolution of the exempt market dealer’s directors.

An exempt market dealer’s insurance must provide for a double aggregate limit or a full reinstatement of coverage.

D. Financial Reporting

Annual audited financial statements are required to be filed with the applicable provincial securities commissions within 90 days after the firm’s year-end along with a prescribed form showing calculation of excess working capital. Unaudited interim financial statements are required to be filed within 30 days after the end of the firm’s 1st, 2nd and 3rd interim periods.

E. Know Your Client, Suitability and Relationship Disclosure

Exempt market dealers must:

- i. collect know-your-client (“KYC”) information for all clients, excluding other registered firms and financial institutions, with reduced requirements for Permitted Clients (clients meeting certain heightened accredited investor criteria) (“Permitted Clients”) that have

given written waiver from suitability requirements. KYC information should be periodically updated to ensure that on-going suitability determinations are supportable;

- ii. conduct suitability assessment of investments for clients, except for Permitted Clients that have given written waiver from suitability requirement (not applicable to managed accounts); and
- iii. provide relationship disclosure information to all clients, except for Permitted Clients that have given written waiver from relationship disclosure requirements (not applicable to managed accounts).

F. Record Keeping

Exempt market dealers are required to maintain records to accurately record business and demonstrate compliance with securities legislation. Records must be kept in a manner that permits access by the regulators in a reasonable period of time and allow regulators to read them and records must be kept for 7 years from the date created.

G. Client Statements

Quarterly statements of account are required to be provided to each client unless the client requests other reporting.

H. Client Assets

Client assets must be held in trust, segregated from the portfolio manager's own property and in accordance with safekeeping requirements.

I. Compliance Systems

Exempt market dealers must establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to assure compliance with securities legislation and to manage risks associated with the business in accordance with prudent business practices.

J. Complaint Handling, Dispute Resolution

Exempt market dealers must document and respond to each complaint made to the firm about products or services offered by the firm.

Exempt market dealers must participate in an independent dispute resolution or mediation service.

K. Extending Credit to Clients

Exempt market dealers are not permitted to lend money, extend credit or provide margin to clients.

L. Conflicts of Interest

Exempt market dealers must make reasonable efforts to identify existing and potential material conflicts of interest and must respond to them and provide written disclosure of a conflict of interest when there is a reasonable likelihood that the client would consider the conflict important when entering into a proposed transaction. In addition, Exempt market dealers must disclose to clients prescribed information about advising on securities of Related and Connected Issuers (generally, "Related Issuers" and "Connected Issuers" are issuers that, by reason of the registrant or any of its affiliates owning securities of the Issuer, having common directors and officers with the issuer, or otherwise have or are deemed to have

a relationship with the registrant, it may reasonably lead to a question as to the registrant's independence from the issuer).

Exempt market dealers are restricted in carrying out certain specified self-dealing transactions for investment portfolios managed by them, including managed accounts and investment funds. The purpose of this restriction is to prohibit inter-funding trading, including crosses placed through registered dealers.

M. Allocation of Investments

Exempt market dealers must ensure fairness in allocating investment opportunities among clients, have policies that provide for this and provide specified disclosure to clients about fairness policies.

N. Referral Arrangements

Exempt market dealers must comply with rules regarding referral arrangements mandating disclosure to clients and written agreement reflecting the arrangements.

Registration Process

In connection with the application for registration as an Exempt Market Dealer, the basic documentation that will need to be submitted to Canadian Securities Regulators is as follows:

A. Firm Registration

A firm will need to complete and submit to the designated Principal Regulator (the applicable securities commission in the province that the firm intends to designate as its principal jurisdiction), a completed Form 31-109F6, Application for Firm Registration, together with audited financial statements, proof of insurance coverage, copies of applicable investment policies, compliance manuals and documentation, applicable filing fees, and any other consents, undertakings etc. as maybe required in support thereof. In addition, the following documentation must be included with the firm registration application:

- i. business plan addressing key business considerations and structure including:
 - (a) disclosure regarding shareholders, affiliates, related parties, management, and permitted individuals; provide background on management and permitted individuals;
 - (b) organizational chart and ownership chart;
 - (c) nature of the business and business objectives;
 - (d) target market and market analysis;
 - (e) revenue model and financial projections;
 - (f) marketing (what and how);
 - (g) human resources plan (recruitment, training and staffing); and
 - (h) risk management (identify business and operational risks and how they will be addressed);
- ii. policies & procedures / compliance manual outlining proposed operations including:

- (a) compliance function and process;
 - (b) UDP and CCO responsibilities and duties;
 - (c) branch and head office supervision;
 - (d) registration and renewal of registration;
 - (e) new account opening procedures, including know-your-client (KYC) and suitability and account supervision;
 - (f) money laundering and anti-terrorism compliance;
 - (g) outside business activities and conflicts of interest;
 - (h) disclosure when recommending related party or connected securities;
 - (i) custody and segregation of client assets;
 - (j) subscriptions and trading / insider and early warning reporting;
 - (k) business continuity plan;
 - (l) advertising sales communication and other client communications;
 - (m) complaints;
 - (n) referral arrangements;
 - (o) human resources (hiring and training)
 - (p) capital requirements, calculation of excess working;
 - (q) bonding and insurance; and
 - (r) books and records including preparation of audits and financial reporting;
- iii. notarized copies of the firm's constituting documents;
 - iv. Form 31-103F1 – *Calculation of Excess Working Capital*
 - v. copy of directors' resolution approving insurance coverage;
 - vi. audited financial statements for the current fiscal period;
 - vii. letter of direction to auditors;
 - viii. evidence of the firm's extra provincial registrations for each jurisdiction in which it wishes to register, if any; and
 - ix. sample KYC forms.

If the firm wishes to register in a jurisdiction in Canada where it does not have a business office, it will be required to appoint a local Agent for Service resident in the local jurisdiction.

Applications for registration and all subsequent reporting with the securities regulators are completed on-line through the “National Registration Database” (“NRD”). Applicable filing fees, both for initial registration and for on-going reporting requirements, are also paid through NRD via electronic ‘funds transfer. Before a firm can submit its initial application, it will need to register with NRD and pay applicable registration fees.

B. Individual Registrations

Each individual that is to be registered as UDP, CCO, Dealing Representative, or a Permitted Individual must also complete and submit to the Principal Regulator via NRD a completed Form 31-109F4, Application for Individual Registration, together with applicable filing fees.

For individuals registering in categories with applicable proficiency requirements, evidence of that individual’s ability to meet required proficiency must also be submitted to the Principal Regulator.

C. Approval of Application for Registrations

Provided that all applicable registration forms are properly completed, and all required supporting documentation is provided in connection with the submission of the Application for Registration, the review and approval process is typically between 30 and 90 days. However, if there are serious deficiencies with the firm’s application or in the information provided by individual firm representatives, or if the principal regulator has received high volumes of applications for registration, the review and approval process can take considerably longer.

D. Fees

In connection with an application for Registration, a firm is required to pay fees to the NRD and the Commission in each jurisdiction in which it is applying for registration. The application fees charges by the applicable securities commissions vary from province to province. The applicable NRD fees, and British Columbia Securities Commission fees are as follows:

NRD:

- i. NRD Firm Enrolment Fee: \$500.00;
- ii. NRD Individual Enrolment Fee: \$75.00 per individual for the principal jurisdiction, plus an additional \$20.50 for each additional jurisdiction.

BCSC:

- iii. Firm application Fee: \$2,500.00;
- iv. Individual Application Fee: \$250.00 per individual.



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