

CMRA Regulation 31-501
Registration Requirements, Exemptions and Related Matters

PART 1 DEFINITIONS AND INTERPRETATION

1. Definitions
2. Interpretation

PART 2 REGISTRATION REQUIREMENTS

3. Auditor of registrant
4. Registered dealer acting as principal
5. Investor compensation fund
6. Over-the-counter trading and reporting

PART 3 EXEMPTIONS FROM THE REQUIREMENT TO REGISTER

7. Ontario Financing Authority, British Columbia Investment Management Corporation, and New Brunswick Investment Management Corporation
8. Non-resident investment fund manager

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PART 1 DEFINITIONS AND INTERPRETATION

1. Definitions

In this Regulation,

“chief compliance officer” means the individual designated under section 11.3 of NI 31-103;

“founder” has the same meaning as in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*;

“investment dealer” has the same meaning as in section 1.1 of NI 31-103;

“mutual fund dealer” has the same meaning as in section 1.1 of NI 31-103;

“NI 31-103” means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“OTC issuer” means an issuer that has

- (a) a class of OTC-quoted securities, other than American Depositary Receipts; and
- (b) no class of securities listed or quoted on a recognized exchange, or an exchange that is recognized for the purposes of this Regulation;

“OTC-quoted securities” means a class of securities that has been assigned a ticker symbol by the Financial Industry Regulatory Authority in the United States of America for use on any of the over-the-counter markets in the United States of America and includes a class of securities whose trades have been reported in the grey market; and

“ultimate designated person” means the individual designated under section 11.2 of NI 31-103.

2. Interpretation

In this Regulation, “permitted client” has the same meaning as in section 1.1 of NI 31-103, except that it excludes paragraphs (m) and (n) and includes a registered charity under the *Income Tax Act (Canada)* that obtains advice on the securities to be traded from an “eligibility adviser”, as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*, or an adviser registered under the securities legislation of the jurisdiction of the registered charity.

PART 2 REGISTRATION REQUIREMENTS

3. Auditor of registrant

- (1) Every registrant that is not a member of a recognized self-regulatory organization must appoint an auditor.
- (2) The auditor of a registrant that is not a member of a recognized self-regulatory organization must make an examination of the annual financial statements and other regulatory filings of the registrant, in accordance with generally accepted auditing standards, and must prepare a report on the financial affairs of the registrant in accordance with professional reporting standards.

4. Registered dealer acting as principal

- (1) If a registered dealer
 - (a) intends, as principal, to effect a trade in a security with a person who is not a registered dealer; and
 - (b) issues, publishes or sends a notice, circular, pamphlet, letter, advertisement, telegram or some other record to that person to effect that trade,

the registered dealer must not contract for the sale or purchase of the security unless, before contracting and before accepting payment or receiving any security or other consideration under or in anticipation of the contract, the registered dealer has stated in the record referred to in paragraph (b) that the registered dealer proposes to act as principal in the trade.

- (2) A statement made in compliance with subsection (1) that a registered dealer proposes to act or has acted as principal in respect of a trade in a security does not prevent that dealer from acting as agent in respect of a trade of that security.

5. Investor compensation fund

- (1) An investment dealer must not act as a dealer unless the investment dealer participates in a designated investor compensation fund.
- (2) A mutual fund dealer must not act as a dealer unless the mutual fund dealer participates in a designated investor compensation fund.
- (3) A registered dealer that is not subject to subsection (1) or (2) must provide to future clients, before accepting each client, and to existing clients written notice that
 - (a) the dealer does not participate in or contribute to an investor compensation fund; and
 - (b) as a result, clients will not have the benefit of coverage under any investor compensation fund.

6. Over-the-counter trading and reporting

Trading in OTC-quoted securities

- (1) An investment dealer that trades in securities of OTC issuers is required to comply with subsections (3) to (10).
- (2) The requirements in subsections (3) through (10) do not apply to an investment dealer that
 - (a) does not, except for isolated trades, trade in securities of OTC issuers; and
 - (b) delivers a completed Form 31-501F1 *Undertaking to the Authority*.

Monitoring, recordkeeping and reporting

- (3) An investment dealer must
 - (a) record quarterly the total agency commissions earned by it, and each of its dealing representatives, through its offices in the CMR Jurisdictions, from trading securities of OTC issuers;
 - (b) calculate and record quarterly, for it and each of its dealing representatives in the CMR Jurisdictions, the proportion of commissions recorded under paragraph (a) to total agency commissions earned trading all equity securities through its offices in the CMR Jurisdictions;
 - (c) record quarterly every deposit of securities of an OTC issuer made through an office in a CMR Jurisdiction into an account for which
 - (i) the beneficial owner, or an individual who controls the beneficial owner, or
 - (ii) a person who gives trading instructions,is an insider, control person, or founder of the OTC issuer, or a person who conducts or causes to be conducted investor relations activities relating to the OTC issuer;
 - (d) record quarterly the total number of deposits of securities of OTC issuers it refused under subsection (10); and
 - (e) within 30 days of the end of each calendar quarter, deliver a completed Form 31-501F2 *Investment Dealer Trading in OTC Issuer Securities* to the Authority with the information recorded under paragraphs (a), (b), and (d).

Establishing beneficial ownership

- (4) An investment dealer must not accept an order to sell securities of an OTC issuer until it makes the inquiries, and receives the information, necessary to form a reasonable belief that it knows the identity of the beneficial owner of those securities.

- (5) If the person an investment dealer believes to be the beneficial owner of the securities is not an individual, the investment dealer must make the inquiries, and receive the information, necessary for it to form a reasonable belief that it knows the identity of every individual who controls or directs, directly or indirectly, the beneficial owner.
- (6) An investment dealer must take reasonable steps to determine, for every person it identifies under subsection (4) or (5)
 - (a) whether the person is an insider, control person, or founder of the OTC issuer, or a person who conducts or causes to be conducted investor relations activities relating to the OTC issuer; and
 - (b) if so, how the person acquired the securities.

Responsibility of designated individual

- (7) An investment dealer must designate an individual to manage and enforce the investment dealer's obligations under subsections (3) through (10).
- (8) An individual designated under subsection (7) must be
 - (a) the president, chief executive officer, chief operating officer, or chief financial officer of the investment dealer, or an individual from the investment dealer who performs the functional equivalent to any of those positions;
 - (b) the chief compliance officer of the investment dealer; or
 - (c) the ultimate designated person of the investment dealer.
- (9) The individual designated under subsection (7) must, in writing, approve the policies and procedures the investment dealer adopts to comply with subsections (3) through (10), and confirm that those policies and procedures will ensure compliance with this section.
- (10) An investment dealer must not accept a deposit of securities of an OTC issuer through the physical deposit of share certificates until the individual designated under subsection (7) approves the deposit.

PART 3 EXEMPTIONS FROM THE REQUIREMENT TO REGISTER

7. Ontario Financing Authority, British Columbia Investment Management Corporation, and New Brunswick Investment Management Corporation

The registration requirement does not apply to a person listed below in the fulfillment of its duties and responsibilities under the legislation authorizing its activities:

- (a) Ontario Financing Authority;
- (b) British Columbia Investment Management Corporation;
- (c) New Brunswick Investment Management Corporation.

8. Non-resident investment fund manager

General conditions to exemptions

- (1) The exemptions in subsections (2) and (3) are not available to a person if the person is registered in a CMR Jurisdiction in a category of registration that permits the person to act as an investment fund manager in respect of the activities for which the exemption is provided.

No active solicitation in a CMR Jurisdiction

- (2) The investment fund manager registration requirement does not apply to a person acting as an investment fund manager of one or more investment funds if it does not have a place of business in a CMR Jurisdiction and if the person and those investment funds have not, at any time after the CMR launch date, actively solicited residents in a CMR Jurisdiction to purchase securities of the fund.

Permitted clients

- (3) The investment fund manager registration requirement does not apply to a person acting as an investment fund manager of one or more investment funds if all securities of the investment funds distributed in the CMR Jurisdiction were distributed under an exemption from the prospectus requirement to a permitted client.
- (4) The exemption in subsection (3) is not available unless all of the following apply:
 - (a) the investment fund manager does not have its head office or its principal place of business in Canada;
 - (b) the investment fund manager is incorporated, formed or created under the laws of a foreign jurisdiction;
 - (c) none of the investment funds is a reporting issuer in any jurisdiction of Canada;
 - (d) the investment fund manager has submitted to the Chief Regulator a completed Form 31-501F3 *Submission to Jurisdiction and Appointment of Agent for Service for International Investment Fund Manager*;
 - (e) the investment fund manager has notified the permitted client in writing of all of the following:
 - (i) the investment fund manager is not registered in a CMR Jurisdiction to act as an investment fund manager,
 - (ii) the foreign jurisdiction in which the head office or principal place of business of the investment fund manager is located,
 - (iii) all or substantially all of the assets of the investment fund manager may be situated outside of Canada,

- (iv) there may be difficulty enforcing legal rights against the investment fund manager because of the above,
 - (v) the name and address of the agent for service of process of the investment fund manager in a CMR Jurisdiction.
- (5) A person that relied on the exemption in subsection (3) during the 12 month period preceding December 1 of a year must notify the Chief Regulator, by December 1 of that year, of the following:
 - (a) the fact that it relied upon the exemption in subsection (3);
 - (b) for all investment funds for which it acts as an investment fund manager, the total assets under management expressed in Canadian dollars, attributable to securities beneficially owned by residents of the CMR Jurisdictions as at the most recently completed month.
- (6) A person relying on the exemption in subsection (3) must
 - (a) file with the Chief Regulator a completed Form 31-501F4 *Notice of Regulatory Action* within 10 days of the date on which that person began relying on that exemption; and
 - (b) notify the Chief Regulator of any change to the information previously submitted under this subsection within 10 days of the change.

Notice to security holders

- (7) A registered investment fund manager whose head office or principal place of business is not located in Canada must provide, or cause to be provided, to security holders with an address of record in a CMR Jurisdiction on the records of each investment fund in respect of which the investment fund manager acts as an investment fund manager, a statement in writing disclosing the following:
 - (a) the investment fund manager is not resident in a CMR Jurisdiction;
 - (b) the foreign jurisdiction in which the head office or the principal place of business of the investment fund manager is located;
 - (c) all or substantially all of the assets of the investment fund manager may be situated outside of Canada;
 - (d) there may be difficulty enforcing legal rights against the investment fund manager because of the above;
 - (e) the name and address of the agent for service of process of the investment fund manager in a CMR Jurisdiction.