

National Instrument 35-101
Conditional Exemption from Registration for United States Broker-Dealers and Agents

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PART 1 DEFINITIONS

1.1 Definitions

In this Instrument,

“agent” means a partner, officer, director or salesperson of a broker-dealer who is acting on behalf of a broker-dealer in effecting trades of securities;

“broker-dealer” means a “broker” or “dealer,” as those terms are defined in the 1934 Act, that has its principal place of business in the United States of America;

“foreign security” means a security

- (a) that is listed for trading or quoted on an exchange or market outside of Canada;
or
- (b) of an issuer that is not incorporated, continued or organized under the laws of Canada or a jurisdiction of Canada; and

“NASD” means the National Association of Securities Dealers in the United States of America.

PART 2 BROKER-DEALER EXEMPTION

2.1 Exemption from dealer registration requirement

The dealer registration requirement does not apply to a broker-dealer if

- (a) the broker-dealer has no office or other physical presence in any jurisdiction in Canada;
- (b) the broker-dealer is trading in a foreign security;
- (c) the trading is with or for
 - (i) an individual ordinarily resident in the United States of America who is temporarily resident in the local jurisdiction and with whom the broker-dealer had a broker-dealer client relationship before the individual became temporarily resident in the local jurisdiction; or
 - (ii) an individual if the trade is for the individual’s tax-advantaged retirement savings plan or with the individual’s tax-advantaged retirement savings plan, and
 - (i) the plan is located in the United States of America,

- (ii) the individual is a holder of or contributor to the plan, and
 - (iii) the individual was previously resident in the United States of America;
- (d) the broker-dealer has not advertised for or solicited new clients in the local jurisdiction;
- (e) the broker-dealer is a member of the NASD;
- (f) the broker-dealer has delivered, or immediately after the broker-dealer first relies on this section delivers, to the securities regulatory authority
 - (i) a notice that the broker-dealer is relying on an exemption from the registration requirement provided under this Instrument;
 - (ii) a statement of the broker-dealer certifying that the broker-dealer is registered in the state of the United States of America where the broker-dealer was located when the broker-dealer first relied on this section; and
 - (iii) an executed Form 35-101F1 Submission to Jurisdiction and Appointment of Agent for Service of Process;
- (g) the broker-dealer has delivered a notice to the securities regulatory authority describing any criminal or quasi-criminal proceeding brought against the broker-dealer or its agents in any jurisdiction or foreign jurisdiction, or of any decision, order, ruling, or other requirement made with respect to or imposed on the broker-dealer or its agents in a jurisdiction or foreign jurisdiction as a result of any administrative, self-regulatory or regulatory action, hearing or proceeding involving fraud, theft, deceit, misrepresentation or similar conduct;
- (h) the broker-dealer has disclosed to the client that the broker-dealer and its agents are not subject to the full regulatory requirements otherwise applicable under local securities legislation; and
- (i) the broker-dealer, in the course of its dealings with clients, acts fairly, honestly and in good faith.

2.2 Termination notice

A broker-dealer shall immediately notify the securities regulatory authority if the broker-dealer will no longer engage in trading or advising activities under section 2.1.

2.3 Exemption from adviser registration requirement

The adviser registration requirement does not apply to advising activities of the broker-dealer if those activities are solely incidental to trading activities of the broker-dealer under section 2.1.

PART 3 AGENTS EXEMPTION

3.1 Agents exemption

The dealer registration requirement does not apply to an agent if

- (a) the trading is on behalf of a broker-dealer that has notified the agent of its intent to rely on the exemption under section 2.1;
- (b) the agent has no office or other physical presence in any jurisdiction in Canada;
- (c) the agent is trading in a foreign security;
- (d) the trading is with or for
 - (i) an individual ordinarily resident in the United States of America who is temporarily resident in the local jurisdiction and with whom the broker-dealer on whose behalf the agent is trading had a broker-dealer client relationship before the individual became temporarily resident in the local jurisdiction; or
 - (ii) an individual if the trade is for the individual's tax-advantaged retirement savings plan or with the individual's tax-advantaged retirement savings plan, and
 - (i) the plan is located in the United States of America,
 - (ii) the individual is a holder of or contributor to the plan, and
 - (iii) the individual was previously resident in the United States of America;
- (e) the agent has not advertised for or solicited new clients in the local jurisdiction;
- (f) the agent has delivered, or immediately after the agent first relied on this section delivers, to the securities regulatory authority
 - (i) a notice that the agent is relying on this Instrument for an exemption from the registration requirement;
 - (ii) a statement of the agent certifying that the agent is registered in the state in the United States of America where the agent was located when the agent first relied on this section; and
 - (iii) an executed Form 35-101F2 Submission to Jurisdiction and Appointment of Agent for Service of Process;
- (g) the agent has delivered a notice to the securities regulatory authority describing any criminal or quasi-criminal proceeding brought against the agent in any jurisdiction or foreign jurisdiction, or of any decision, order, ruling, or other requirement made with respect to or imposed on the agent in a jurisdiction or

foreign jurisdiction as a result of any administrative, self-regulatory or regulatory action, hearing or proceeding involving fraud, theft, deceit, misrepresentation or similar conduct;

- (h) the agent, in the course of its dealings with the broker-dealer's clients, acts fairly, honestly and in good faith.

3.2 Termination notice

An agent shall immediately notify the securities regulatory authority if the agent will no longer engage in trading or advising activities under section 3.1.

3.3 Exemption from adviser registration requirement

The adviser registration requirement does not apply to advising activities of the agent if those activities are solely incidental to trading activities of the agent under section 3.1.

PART 4 EXEMPTION FROM PROSPECTUS AND UNDERWRITER REQUIREMENTS

4.1 Exemption from prospectus and underwriter requirements

The prospectus requirement and underwriter registration requirement do not apply to a distribution of foreign securities if that distribution

- (a) is made by a broker-dealer or agent that is exempt from the adviser registration requirement and the dealer registration requirement under section 2.1 or 3.1; and
- (b) is made in compliance with all applicable
 - (i) U.S. federal securities laws, and
 - (ii) state securities legislation in the United States of America.