

March 17, 2015

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, NEW BRUNSWICK, NOVA SCOTIA AND SASKATCHEWAN**

AND

**IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS**

AND

**IN THE MATTER OF
SUNTRUST ROBINSON HUMPHREY, INC.
(the Applicant)**

DECISION

Background

Related and Connected Issuer Disclosure

The regulator in Ontario has received an application from the Applicant for a decision under the Legislation of the jurisdiction of the principal regulator for the following exemptions (the **Passport Exemptions**):

1. an exemption from the disclosure required by subsection 2.1(1) of National Instrument 33-105 *Underwriting Conflicts* (**NI 33-105**) (such disclosure, the **Related and Connected Issuer Disclosure**), as specified in Appendix C of NI 33-105 in an Exempt Offering Document (as defined herein) with respect to distributions of securities that meet all of the following criteria (a **Specified Exempt Distribution**):
 - (a) a distribution under an exemption from the prospectus requirement set out in section 2.3 of National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**) (such exemption, the **Accredited Investor Prospectus Exemption**),
 - (b) of a security offered primarily in a “foreign jurisdiction”, as defined in National Instrument 14-101 *Definitions*) (such jurisdiction, a **Foreign Jurisdiction**),
 - (c) by the Applicant named in Schedule A attached hereto as underwriter,

- (d) to Canadian investors each of which is a “permitted client”, as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) (such investor, a **Permitted Client**), and
 - (e) of a security issued by an issuer incorporated, formed or created under the laws of a Foreign Jurisdiction, that is not a reporting issuer in any jurisdiction of Canada, that has its head office or principal executive office outside of Canada (a **Foreign Issuer**); and
2. an exemption from the requirement to include the Related and Connected Issuer Disclosure in an Exempt Offering Document for a Specified Exempt Distribution of a security issued or guaranteed by the government of a Foreign Jurisdiction (a **Foreign Government**) and that meets all of the criteria described in (i) above other than (e).

Right of Action Disclosure

The securities regulatory authority or regulator in each of Ontario, New Brunswick, Nova Scotia and Saskatchewan (the **Coordinated Exemptive Relief Decision Makers**) has received an application (the **Coordinated Exemptive Relief**) from the Applicant for a decision under the securities legislation of those jurisdictions for an exemption from the requirement to disclose in an Exempt Offering Document with respect to a Specified Exempt Distribution, a description of the statutory right of action available to purchasers for a misrepresentation in the Exempt Offering Document (the **Right of Action Disclosure**).

Process for Exemptive Relief Applications in Multiple Jurisdictions

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a hybrid application):

- (a) the OSC is the principal regulator for this application;
- (b) the Applicant has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Yukon, the Northwest Territories and Nunavut;
- (c) the decision is the decision of the principal regulator; and
- (d) the decision evidences the decision of each Coordinated Exemptive Relief Decision Maker.

Interpretation

Terms defined in MI 11-102 and National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

Legislation means, for the local jurisdiction, its securities legislation.

Exempt Offering Document means:

- (a) in New Brunswick, Nova Scotia, Ontario and Saskatchewan, an offering memorandum as defined under the securities legislation of that jurisdiction, and
- (b) in all other jurisdictions, a document including any amendments to the document, if the document
 - (i) describe the business and affairs of an issuer, and
 - (ii) has been prepared primarily for delivery to and review by a prospective purchaser to assist the prospective purchaser in making an investment decision in respect of securities being distributed pursuant to an exemption from the prospectus requirement.

Representations

This decision is based on the following facts represented by the Applicant:

1. The Applicant has or will file in each jurisdiction in which it will rely on the international dealer exemption under section 8.18 of NI 31-103 (the **International Dealer Exemption**), a Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service of Process (Form 31-103F2)*. Attached hereto as Schedule A is a chart which sets out the jurisdictions in which the Applicant has already filed a Form 31-103F2 in order to qualify for the International Dealer Exemption.
2. The Applicant is registered as a broker-dealer with the U.S. Securities and Exchange Commission and a member of the Financial Industry Regulatory Authority, a self-regulatory organization.
3. The Applicant is actively involved in underwriting public offerings and private placements in the United States and elsewhere by U.S. and other foreign issuers.
4. The Applicant regularly considers extending offerings of Foreign Issuers or Foreign Governments to Canadian investors that are Permitted Clients under the Accredited Investor Prospectus Exemption.
5. If a prospectus or private placement memorandum (a **foreign offering document**) is provided to investors outside Canada, it is common practice where these offerings are extended to Canadian investors to provide the foreign offering document to Canadian investors. The foreign offering document when used in the jurisdiction constitutes an Exempt Offering Document.
6. If an Exempt Offering Document is provided to Canadian investors, it is required to include, depending on the jurisdiction, one or both of (i) the Related and Connected Issuer Disclosure; and (ii) Right of Action Disclosure.

7. The Related and Connected Issuer Disclosure prescribes summary disclosure to be included on the cover page of an Exempt Offering Document, together with a cross-reference, and more detailed disclosure to be included in the body of an Exempt Offering Document concerning the nature of any relationship that the issuer or any selling securityholder may have with an underwriter of the distribution or any affiliate of an underwriter, either through a significant security holding (related issuer) (**Related Issuer Disclosure**) or such that a reasonable prospective purchaser of the offered securities may be led to question if the underwriter or affiliate and the issuer or selling securityholder are independent of each other in respect of the distribution (connected issuer) (**Connected Issuer Disclosure**) and the effect the distribution may have on the underwriter or affiliate.
8. The Right of Action Disclosure provides a description of the statutory right of action for rescission or damages available to purchasers in the event of misrepresentation in the Exempt Offering Document.
9. In order to have the prescribed Canadian disclosure included in the foreign offering document, that foreign offering document may either be amended to include the prescribed Canadian disclosure, or, more commonly, a “wrapper” with the prescribed Canadian disclosure and other optional disclosure (a **Canadian wrapper**) is prepared by one or more underwriters making a Specified Exempt Distribution and attached to the face of the foreign offering document, so that the Canadian wrapper together with the foreign offering document form one document constituting a Canadian Exempt Offering Document for the purposes of that offering. The underwriters making the Exempt Distribution or their affiliates provide the Canadian Exempt Offering Document to purchasers in Canada.
10. An offering document for an offering registered under U.S. federal securities laws (a **U.S. Registered Offering**) by a U.S. domestic issuer or foreign private issuer must include disclosure, pursuant to section 229.508 of Regulation S-K under the U.S. Securities Act of 1933, as amended (the **1933 Act**) and FINRA Rule 5121 regarding underwriter conflicts of interest, that is substantially similar to that required by the Related and Connected Issuer Disclosure, except that cover page disclosure is not required.
11. An offering document for a U.S. Registered Offering must identify each underwriter having a material relationship with the issuer and state the nature of the relationship. Pursuant to FINRA Rule 5121, no underwriter that has a conflict of interest may participate in a U.S. Registered Offering unless the offering document includes prominent disclosure of the nature of the conflict of interest.
12. Certain unregistered offerings (such as bank debt offerings exempt from registration under subsection 3(a)2 of the 1933 Act, offerings by foreign governments and securities exchange offerings exempt from registration under subsection 3(a)9 of the 1933 Act) are also subject to FINRA Rule 5121.

13. Right of Action Disclosure is only required in the provinces of Saskatchewan, Nova Scotia, New Brunswick and Ontario. The securities legislation of Manitoba, Prince Edward Island, Newfoundland and Labrador, Yukon, the Northwest Territories and Nunavut provide for statutory rights of rescission or damages in the event of misrepresentation in an Exempt Offering Document, but do not mandate disclosure of the rights in the Exempt Offering Document. The securities legislation of Alberta, British Columbia and Quebec provides for statutory rights of rescission or damages in the event of misrepresentation in an Exempt Offering Document when the exemption in section 2.9 of NI 45-106 is relied upon.
14. The added complexity, delays and enhanced costs associated with ensuring compliance with Canadian Exempt Offering Document requirements are frequently factors that issuers and underwriters take into consideration when deciding whether to include Canadian investor participation in an offering.
15. Non-Canadian issuers and underwriters will often extend the offering to Canadian institutional investors, provided that the timing requirements and incremental compliance costs do not outweigh the benefits of doing so.
16. In many cases, an offering proceeds on such an accelerated timetable that even a one-day turn-around to prepare a Canadian wrapper can make it impracticable to include participation by Canadian investors.

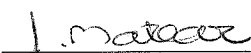
Decision

Each of the principal regulator and the Coordinated Exemptive Relief Decision Makers is satisfied that the decision meets the test set out in the Legislation for the relevant regulator or securities regulatory authority to make the decision.

The decision of the principal regulator under the Legislation is that the Passport Exemptions are granted, provided that:

- (a) the Applicant shall deliver to each prospective purchaser of securities under a Specified Exempt Distribution a notice, substantially in the form of Schedule B attached hereto, prior to the first reliance on this Decision for distributions of securities to such prospective purchaser and the purchaser provides in return a written acknowledgement and consent to reliance by the Applicant upon this Decision;
- (b) for a Specified Exempt Distribution by a Foreign Issuer, any Exempt Offering Document provided by the Applicant complies with the disclosure requirements applicable to a U.S. Registered Offering with respect to disclosure of underwriter conflicts of interest between the Applicant and the issuer or selling securityholder, whether or not the offering is a U.S. Registered Offering;

- (c) if Related Issuer Disclosure would have been required for a Specified Exempt Distribution of securities issued or guaranteed by a Foreign Government, any Exempt Offering Document provided by the Applicant:
 - (i) complies with the disclosure requirements applicable to a U.S. Registered Offering with respect to disclosure of underwriter conflicts of interest between the Applicant and the issuer or selling securityholder, whether or not the offering is a U.S. Registered Offering; or
 - (ii) contains the disclosure specified in Appendix C of NI 33-105 to be included in the body of a prospectus or other document;
- (d) on a monthly basis (unless and until otherwise notified in writing by the Director of the Corporate Finance Branch of the principal regulator), the Applicant will deliver to the Director of the Corporate Finance Branch of the principal regulator (within ten days of the last day of the previous month), a list of the Specified Exempt Distributions it has made in reliance on this Decision, if any, stating the name of the issuer, the security distributed, the total value of the offering in Canadian dollars, the value in Canadian dollars of the securities distributed in Canada by the Applicant, the date of the Form 45-106F1 *Report of Exempt Distribution* (or Form 45-106F6 *British Columbia Report of Exempt Distribution* in British Columbia) filed with applicable regulators and the jurisdictions in which it was filed;
- (e) each Form 45-106F1 filed with the principal regulator by an Applicant in connection with a Specified Exempt Distribution shall be filed using the electronic version of Form 45-106F1 available on the website of the principal regulator; and
- (f) the Passport Exemptions shall terminate on the earlier of: (i) the date that is three years after the date of this Decision and (ii) the date that amendments to the Legislation become effective in each jurisdiction of Canada that provide for substantially the same relief as the Passport Exemptions.



Jo-Anne Matear
Manager, Corporate Finance
Ontario Securities Commission

AND

The decision of the Coordinated Exemptive Relief Decision Makers under the Legislation is that the Coordinated Exemptive Relief is granted, provided that:

- (a) the Applicant shall deliver to each prospective purchaser of securities under a Specified Exempt Distribution a notice, substantially in the form of Schedule B attached hereto, prior to the first reliance on this Decision for distributions of securities to such prospective purchaser and the purchaser provides in return a written acknowledgement and consent to reliance by the Applicant upon this Decision; and
- (b) the Right of Action Relief shall terminate in a particular jurisdiction on the earlier of: (i) the date that is three years after the date of this Decision and (ii) the date that amendments to the Legislation become effective in the jurisdiction that provide for substantially the same relief as the Right of Action Relief.


Ontario Securities Commission


Ontario Securities Commission

SCHEDULE A

Jurisdictions in which the Applicant has Filed Form 31-103F2 in Order to Qualify for the International Dealer Exemption

Applicant	Registration Status	Exempt International Dealer	Exempt Market Dealer	Restricted Dealer	Investment Dealer
<u>SunTrust</u>					
SunTrust Robinson Humphrey, Inc.	Relying on the International Dealer Exemption	(AB, BC, QC, ON)			

SCHEDULE B
FOREIGN SECURITY PRIVATE PLACEMENTS

NOTICE TO CLIENTS

We may from time to time sell to you as principal or agent securities of Foreign Issuers or securities of or guaranteed by Foreign Governments sold into Canada on a prospectus exempt basis (“**Foreign Security Private Placements**”). On [■], 2015, the Canadian Securities Administrators issued a decision (the “**Decision**”) exempting us from certain disclosure obligations applicable to such transactions on the basis that you are a permitted client as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registration Requirements*. The Decision is available at [■] and terminates on the earlier of three years after the effective date of the Decision and the date amendments to the Legislation come into effect in each jurisdiction in Canada that provide for substantially the same relief as the Decision. Capitalized terms used but not otherwise defined in this notice have the meanings ascribed to such terms in the Decision.

It is a requirement of the Decision that we notify you of the following two matters set forth in this notice.

1. Statutory Rights of Action

If, in connection with a Foreign Security Private Placement, we deliver to you an offering document that constitutes an offering memorandum or its equivalent under applicable securities laws in Canada, you may have, depending on the province or territory of Canada in which the trade was made to you, remedies for rescission or damages if the offering document and any amendment thereto contains a misrepresentation, provided that the remedies for rescission or damages are exercised by you within the time limit prescribed by the securities legislation of your province or territory. You should refer to any applicable provisions of the securities legislation of your province or territory for the particulars of these rights or consult with a legal advisor.

2. Relationship between the Issuer or Selling Securityholder and the Underwriters

We, in respect of a Foreign Security Private Placement, may have an ownership, lending or other relationship with the issuer of such securities or a selling securityholder that may cause the issuer or selling securityholder to be a “related issuer” or “connected issuer” to us under Canadian securities law (as those terms are defined in National Instrument 33-105 *Underwriting Conflicts*). Under the terms of the Decision, the offering document for a private placement by a Foreign Issuer will disclose underwriter conflicts of interest in accordance with the requirements of U.S. federal securities laws and of the Financial Industry Regulatory Authority, a self-regulatory organization in the United States, applicable to an offering registered under the 1933 Act. The Decision grants an exemption from the requirement to include connected issuer disclosure or cover page related issuer disclosure in an offering document for a private placement of securities of or guaranteed by a Foreign Government.

Please note the following for your information.

3. **Canadian Federal Income Tax Considerations**

The offering document in respect of the Foreign Security Private Placement may not contain a discussion of the Canadian tax consequences of the purchase, holding or disposition of the securities offered. You are advised to consult your own tax advisor regarding the Canadian federal income tax considerations relevant to the purchase of securities offered in a Foreign Security Private Placement having regard to your particular circumstances. The Canadian federal income tax considerations relevant to you may differ from the income tax considerations described in the offering document and such differences may be material and adverse.

Dated [■], 2015

CLIENT ACKNOWLEDGEMENT, CONSENT AND REPRESENTATION

I _____, on behalf of _____, acknowledge receipt of the Notice to Clients dated _____, 2015 and consent to Foreign Security Private Placements made to us by way of offering documents prepared and delivered in reliance on an exemption from the disclosure requirements described in the decision of the Canadian Securities Administrators dated [■], 2015, and represent that _____ is a “permitted client” as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registration Requirements* and an “accredited investor” as defined in National Instrument 45-106 *Prospectus and Registration Exemptions*.

Per: _____
Authorized Signatory

Date: _____

I have authority to bind the company

Name: _____

Title: _____