

CSA Notice Regarding
Coordinated Blanket Order 31-930 *Exemption to allow Exempt Market Dealer Participation in Selling
Groups in Offerings of Securities under a Prospectus*

June 20, 2024

On June 20, 2024, the securities regulatory authorities in Alberta, British Columbia, Nova Scotia, Ontario, Québec and Saskatchewan (the **participating jurisdictions**) published a temporary exemption from the restrictions set out in subsection 7.1(2)(d) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* so that exempt market dealers may participate in prospectus offerings as members of selling groups. The participating jurisdictions have implemented the relief through local blanket orders that are substantively harmonized across the participating jurisdictions (collectively, the **Blanket Orders**).

The securities regulatory authority in New Brunswick anticipates publishing a similar local blanket order in the coming weeks.

Description of Blanket Orders

The Blanket Orders provide that an exempt market dealer may act as a dealer in a distribution of securities made under a prospectus, provided that certain conditions are satisfied, including the following:

- (a) the exempt market dealer acts in accordance with the terms of the selling group agreement with the issuer or investment dealer acting as the lead underwriter in the distribution of the securities made under the prospectus;
- (b) the exempt market dealer acts as a dealer only to a person or company in respect of whom an exemption from the prospectus requirement would be available if the distribution of securities had been made under an exemption from the prospectus requirement;
- (c) the exempt market dealer does not act as an underwriter in connection with the distribution of the securities under the prospectus and limits its interest in the transaction to receiving the usual and customary distributor's or seller's commission payable by an underwriter or issuer such that it comes within the exemption for selling group members in the definition of an "underwriter" under the securities legislation;¹ and
- (d) the total compensation to the exempt market dealer does not exceed 50% of the lowest total compensation paid or payable to any selling group member that is an investment dealer.

Details on these conditions, as well as the other terms and conditions necessary to be satisfied, are included in the Blanket Orders.

Although the outcome of any coordinated Blanket Order is the same in the participating jurisdictions, the language of the Blanket Order issued by each province may not be identical because each jurisdiction's Blanket Order must fit within the authority provided for in local securities legislation.

¹ See clause 1(kkk)(iii) of the *Securities Act* (Alberta); paragraph (d) of the definition of "underwriter" in the *Securities Act* (British Columbia); clause 2(1)(at)(i) of the *Securities Act* (Nova Scotia); paragraph (a) of the definition of "underwriter" in the *Securities Act* (Ontario); and clause 2(1)(ww)(iii) of the *Securities Act* (Saskatchewan).

Reasons for the Blanket Orders

The participating jurisdictions understand that start-up and small businesses are an important part of our provincial economies, serving as key contributors to employment, quality of life and income within communities. Exempt market dealers play a key role in assisting start-ups and small- and medium- sized issuers raise capital. Exempt market dealers help these issuers by acting as dealers or underwriters for the issuers' securities and distributing the issuers' securities under an exemption from the prospectus requirement.

As the issuers grow and mature, the issuers may seek financing through the distribution of their securities under a prospectus. Exempt market dealers are often unable to continue to support these businesses as exempt market dealers are limited to acting in respect of distributions of securities under a prospectus exemption. In particular, exempt market dealers are not able to participate as a member of a selling group in prospectus offerings.

Generally, the appropriate dealer registration category for participating in distributions of securities under a prospectus is the investment dealer category. However, allowing exempt market dealers to participate as a member of a selling group in prospectus offerings may make available additional channels of potential sources of capital to issuers, may provide investors with more investment opportunities, and allows exempt market dealers to participate in an issuer's entire lifecycle (i.e., from early to growth/maturity stage).

Exempt market dealers that intend to rely on the Blanket Orders are required under National Instrument 33-109 *Registration Information* to report a change in business activity by filing a Form 33-109F5 *Change of Registration Information* indicating that they will be participating as a member of selling groups in prospectus offerings.

Day on which the Blanket Orders Cease to Have Effect

The Blanket Orders come into effect on June 20, 2024, and remain in effect until December 20, 2025, unless extended by the participating jurisdictions.

Questions

If you have any questions regarding the Blanket Orders, please contact any of the following:

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COORDINATED BLANKET ORDER 31-930

In the Matter of Exemption to allow Exempt Market Dealer Participation in Selling Groups in Offerings of Securities under a Prospectus

In the Matter of *The Securities Act, 1988*,
SS 1988-89, C S-42.2
(the "Act")

ORDER

WHEREAS the Financial and Consumer Affairs Authority of Saskatchewan (**FCAA** or the **Authority**) has assigned to the Executive Director of the Securities Division, FCAA (**Executive Director**) the power to make exemption orders under the provisions of the Act including orders of general application;

AND WHEREAS staff of the Securities Division (**Staff**) applied for an order pursuant to section 160 of the Act for the purpose of exempting exempt market dealers from the restrictions in subsection 7.1(2)(d) of NI 31-103 that prohibit them from acting as a dealer in a distribution of securities made under a prospectus;

AND WHEREAS terms defined in the Act, National Instrument 14-101 *Definitions*, National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) and National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) have the same meanings in this Order, unless otherwise defined in this Order or the context otherwise requires;

AND WHEREAS in this Order:

“**selling group**” means a group of investment dealers and exempt market dealers

- (a) that was formed in connection with an offering of securities under a prospectus;
- (b) in which all of the members of the group have entered into an agreement with either the issuer or an investment dealer acting as the lead underwriter in connection with the offering to distribute the securities being offered under the prospectus through the members of such selling group; and
- (c) in which at least one member of the group
 - (i) is registered in the category of investment dealer,



- (ii) acts as an underwriter in connection with the distribution of the securities being offered under the prospectus, and
- (iii) with respect to the distribution of the securities under the prospectus, signs a certificate of the underwriter in accordance with the requirements of Ontario securities law.

AND WHEREAS it has been represented to the Executive Director that:

- (a) Exempt market dealers play an important role in assisting start-ups and small- and medium-sized issuers raise capital. Exempt market dealers help these issuers by acting as dealers or underwriters for the issuers' securities and distributing the issuers' securities under an exemption from the prospectus requirement (such as the accredited investor exemption or the offering memorandum exemption).
- (b) As the issuers grow and mature, the issuers may seek financing through offerings of their securities under a prospectus. Exempt market dealers are often limited in their ability to continue to support these issuers at this stage because exempt market dealers can only participate in a distribution of securities to investors if the distribution is made in reliance on an exemption from the prospectus requirement. Exempt market dealers are not permitted to participate in a distribution of securities if the distribution is made under a prospectus. In particular, exempt market dealers are not able to participate as members of selling groups in prospectus offerings.
- (c) Generally, the appropriate dealer registration category for a dealer participating in a distribution of securities made under a prospectus is the investment dealer category. However, allowing exempt market dealers to participate as members of selling groups in prospectus offerings may make available additional channels of potential sources of capital to issuers.
- (d) In order to promote capital formation, the Authority intends to allow exempt market dealers to participate in prospectus offerings as a member of a selling group and, in the interim, considers that it would be appropriate to permit such activity by exempt market dealers.

AND WHEREAS the Executive Director is of the opinion that it would not be prejudicial to the public interest to make this Order.

IT IS ORDERED under section 160 of the Act that:

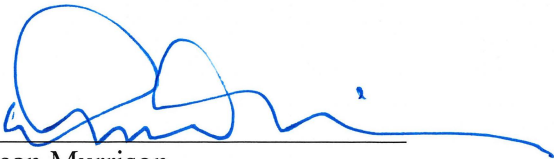
1. An exempt market dealer is exempt from the restrictions in subsection 7.1(2)(d) of NI 31-103 that prohibit them from acting as a dealer in a distribution of securities made under a prospectus provided that all of the following apply:



- a. the exempt market dealer acts as a dealer only in accordance with the terms of a selling group agreement with the issuer or an investment dealer acting as the lead underwriter in the distribution of the securities made under the prospectus;
- b. the exempt market dealer acts as a dealer only to a person or company in respect of whom an exemption from the prospectus requirement would have been available if the distribution of securities had been made under an exemption from the prospectus requirement;
- c. the exempt market dealer does not act as an underwriter in connection with the distribution of the securities under the prospectus and limits its interest in the transaction such that it comes within the exemption for selling group members in clause 2(1) (ww) (iii) of the definition of “underwriter” in the Act; and
- d. the total compensation paid or payable to the exempt market dealer does not exceed 50% of the lowest total amount of compensation paid or payable in connection with the distribution of the securities under the prospectus to any selling group member that is an investment dealer.

IT IS FURTHER ORDERED that this Order comes into effect on June 20, 2024 and expires on December 20, 2025.

Dated this 19, day of June 2024.



Dean Murrison
Executive Director, Securities Division
Financial and Consumer Affairs
Authority of Saskatchewan