

GUIDELINES FOR USE OF MOBILITY EXEMPTIONS UNDER PART 5 OF REGULATION 11-101 RESPECTING PRINCIPAL REGULATOR SYSTEM - CANADIAN SECURITIES ADMINISTRATORS STAFF NOTICE 11-308

Référence : Bulletin de l'Autorité : non disponible

Introduction

This notice provides guidance to dealers, unrestricted advisers and their individual representatives on the use of the mobility exemptions. The mobility exemptions are in Part 5 of Regulation 11-101 respecting Principal Regulator System (Regulation 11-101) and came into effect everywhere but Ontario on September 19, 2005.

In Québec, group savings plan (i.e. mutual funds) firms and their representatives are regulated by the *Act Respecting the Distribution of Financial Products and Services* (the "Distribution Act"). Although Regulation 11-101 was adopted as a regulation under the *Securities Act*, the regulation pursuant to the Distribution Act permitting the application of Part 5 to group investment savings plan firms and their representatives has not yet been adopted. It is expected that this regulation will come into force soon.

In the interim, a blanket order was issued on September 16, 2005 by the Autorité des marchés financiers. It exempts group savings plan firms and representatives everywhere but Ontario from the Distribution Act's registration requirements if they comply with the conditions in Part 5 of Regulation 11-101.

Mobility Exemption Availability

In limited circumstances, the mobility exemptions allow a dealer, an unrestricted adviser, a group savings plan firm or individual representatives to continue dealing with a client that moves to a different jurisdiction and with family members of that client without registering in that other jurisdiction. Relocation of a client to another jurisdiction triggers the availability of the mobility exemptions.

To summarize, to rely on the mobility exemptions, a registrant must

- be registered in its principal jurisdiction,
- have no more than 10 clients in each of the other jurisdictions in the case of a dealer or adviser or no more than 5 clients in each of the other jurisdictions in the case of an individual representative, and
- have assets under management in each of the other jurisdictions of not more than \$10 million in the case of a firm or not more than \$5 million in the case of an individual.

For detailed conditions of use, see sections 5.1 to 5.6 of Regulation 11-101. We also refer you to section 5.7 of Regulation 11-101, which imposes additional conditions of use, including an obligation to provide specified disclosure to eligible clients in each of the other jurisdictions before relying on a mobility exemption.

Before relying on a mobility exemption, a dealer, adviser or individual representative must also notify the regulator in the non-principal jurisdiction under section 5.9 of Regulation 11-101 that it intends to rely on a specified mobility exemption. After relying on a mobility exemption, you must file a notice of principal regulator under section 2.6 of Regulation 11-101 (unless you have filed a notice of principal regulator under Regulation 31-101 respecting National Registration System).

For detailed information about these filings, see sections 2.6 and 5.9 of Regulation 11-101.

Additional Information

The notice filed under section 5.9 of Regulation 11-101 should contain the following information:

- the name of the dealer or adviser and its principal regulator under Regulation 11-101,

- the name of the individual representative and its principal regulator under Regulation 11-101, if applicable, and
- the mobility exemption the registrant is relying on.

Some jurisdictions may request additional information of the type referred to below when a registrant files its notice under section 5.9.

Supervision and Record Keeping

Under securities laws, dealers and advisers must supervise the activities of each of their individual representatives. This includes representatives who provide trading or advising services to clients under a mobility exemption. Dealers and advisers must have appropriate policies and procedures for supervision of representatives relying on any of the mobility exemptions.

In addition, dealers and advisers must ensure they and their individual representatives are entitled to rely on the mobility exemptions. Under securities laws, dealers and advisers must keep the records necessary to demonstrate that they do. If you do not keep the necessary records and you are alleged to have contravened the mobility exemption requirements, it will be difficult for you to demonstrate that you have appropriate compliance procedures.

Relevant records include:

- the name of each client who moved, the date of the move and the jurisdictions involved,
- if a client is a family member of the client who moved, the nature of the relationship to the client who moved,
- the dollar value of the assets for each client, and
- how the registrant disclosed to its client that it is relying on one of the mobility exemptions.

Regulators or self-regulatory organizations (like the Investment Dealers Association or the Mutual Fund Dealers Association) may ask dealers and advisers to provide copies of their policies and procedures and books or records or to make them available to verify compliance with the mobility exemptions.

Frequently Asked Questions and Answers

To assist registrants that intend to rely on the mobility exemptions in Part 5 of Regulation 11-101, we have compiled a list of frequently asked questions. This list is not exhaustive, but does represent the types of inquiries we have received.

Question 1: The firm I work for has its head office in Ontario and my working office is located in Ontario. Can I rely on the mobility exemptions in Part 5 of Regulation 11-101?

Answer: No. Neither you nor your firm is entitled to rely on the mobility exemptions under Part 5 of Regulation 11-101 because the Ontario Securities Commission has not adopted Regulation 11-101.

Question 2: The firm I work for has its head office in Ontario but my working office is located outside of Ontario. Can I rely on the mobility exemptions in Part 5 of Regulation 11-101?

Answer: Yes. An individual representative with a working office located outside of Ontario may rely on one of the mobility exemptions for individual representatives. However, the firm must be registered in the non-principal jurisdiction where the client now resides because the firm is not eligible for any mobility exemption.

Question 3: I had a client who moved to another jurisdiction and became the client of another registrant in that jurisdiction before Regulation 11-101 came into force on September 19, 2005. Can I rely on one of the mobility exemptions in Part 5 to resume providing services to my old client?

Answer: No. You would have to become registered in the jurisdiction in which your "old" client now resides. The mobility exemption would

be available only if you had maintained the client relationship when your “old” client moved to the other jurisdiction. Since you chose not to do that and you have severed your relationship with that client, you cannot rely on the exemption.

Question 4: I became a registrant in a non-principal jurisdiction in order to continue to provide services to a client that had relocated there. Can I allow my registration in the non-principal jurisdiction to lapse or can I voluntarily surrender my registration in order to rely on one of the mobility exemptions?

Answer: Yes, but you would be limited to providing services to a restricted number of eligible clients in the non-principal jurisdiction whose assets under management are within prescribed limits (sections 5.3 to 5.6, Regulation 11-101). Unless you can rely on another registration exemption, you would be prohibited from advertising for or soliciting new clients in the non-principal jurisdiction (section 5.7(c), Regulation 11-101).

Question 5: My working office is located in Saskatchewan and one of my clients moves to Alberta but has family members located in both Alberta and Manitoba. Can I rely on a mobility exemption to provide trading or advising services to up to five family members in both Alberta and Manitoba?

Answer: You may continue to provide trading or advising services, as applicable, to the client who moved from Saskatchewan to Alberta and to up to four family members without being registered in Alberta (sections 5.5 and 5.6, Regulation 11-101). Each of these family members must qualify as an “eligible client” as defined under Regulation 11-101. You could not provide services to family members of your client who reside in Manitoba without first becoming registered in Manitoba.

Question 6: I work for a dealer whose head office is in British Columbia. My working office is also in British Columbia. I have been providing services to 3 clients in Nova Scotia in reliance on one of the mobility exemptions in Regulation 11-101. I want to

provide services to several additional family members of my clients in Nova Scotia. Can I continue to rely on the mobility exemption in Nova Scotia?

Answer: You may continue to rely on the mobility exemptions for an individual representative for so long as you have no more than 5 eligible clients in Nova Scotia and have not exceeded the \$5 million cap on assets (sections 5.5 and 5.6, Regulation 11-101). Once you have more than 5 eligible clients or exceed the asset value cap, you must register in Nova Scotia to provide trading or advising services to clients in Nova Scotia.

Question 7: I have been providing services to fewer than 5 clients in Nova Scotia under one of the individual representative mobility exemptions and wish to provide services to several close friends of those clients. Can I continue to rely on the mobility exemption in Nova Scotia?

Answer: No. Unless your clients fall within the definition of an “eligible client” under Regulation 11-101, you must register in Nova Scotia to provide trading or advising services to clients in Nova Scotia (sections 5.5 and 5.6, Regulation 11-101).

Question 8: If I am relying on a mobility exemption in more than one non-principal jurisdiction, does the cap on the aggregate dollar amount of assets under management or the number of eligible clients apply for each jurisdiction or is it cumulative across the jurisdictions?

Answer: Because the exemptions are available separately in each jurisdiction that adopted Regulation 11-101, the caps on the aggregate dollar amount and number of eligible clients apply in each non-principal jurisdiction. This means that, in each of those jurisdictions, an individual representative can have as many as 5 eligible clients as long as they have combined assets of no more than \$5 million under management in the case of an individual representative. A dealer or adviser can have as many as 10 eligible

clients in each non-principal jurisdiction as long as they have combined assets under management of no more than \$10 million.

Questions

Please refer your questions to any of:

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