

REGULATION TO AMEND REGULATION 33-105 RESPECTING UNDERWRITING CONFLICTS

Securities Act

(R.S.Q., c. V-1.1, s. 331.1, par. (1), (11), (24) and (34))

1. Regulation 33-105 respecting Underwriting Conflicts is amended by inserting, after section 3.2, the following:

“PART 3A – NON-DISCRETIONARY EXEMPTIONS - DESIGNATED FOREIGN SECURITIES

3A.1 Definitions

In this Part,

“designated foreign security” means a security offered primarily in a foreign jurisdiction in either of the following circumstances:

- (a) the security is issued by an issuer that
 - (i) is incorporated, formed or created under the laws of a foreign jurisdiction,
 - (ii) is not a reporting issuer in a jurisdiction of Canada,
 - (iii) has its head office outside of Canada, and
 - (iv) has a majority of its executive officers and directors resident outside of Canada,
- (b) the security is issued or guaranteed by the government of a foreign jurisdiction;

“executive officer” means, for an issuer, an individual who is

- (a) a chair, vice-chair or president,
- (b) a chief executive officer or chief financial officer
- (c) a vice-president in charge of a principal business unit, division or function including sales, finance or production, or
- (d) performing a policy-making function in respect of the issuer;

“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;

“FINRA Rule 5121” means Rule 5121 – *Public Offerings of Securities with Conflicts of Interest* of the United States Financial Industry Regulatory Authority, as amended from time to time;

“permitted client” has the same meaning as in section 1.1 of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations.

“3A.2 Exemption based on U.S. disclosure

Subsection 2.1(1) does not apply to a distribution of a designated foreign security if all of the following apply:

(a) the distribution is made to a permitted client by a specified firm registrant;

(b) an exempt offering document prepared with respect to the distribution is delivered to the permitted client;

(c) the exempt offering document complies with the requirements of section 229.508 of SEC Regulation S-K under the 1933 Act and FINRA Rule 5121, whether or not those requirements apply to the distribution.

“3A.3 Exemption for foreign government securities

Subsection 2.1(1) does not apply to a distribution of a designated foreign security if all of the following apply:

(a) the distribution is made to a permitted client by a specified firm registrant;

(b) the issuer is a connected issuer but not a related issuer of the specified firm registrant; and

(c) the designated foreign security is issued or guaranteed by the government of a foreign jurisdiction.

“3A.4 Relief from front page disclosure requirements

The requirement in subsection 2.1(1) to provide the information specified in items 1, 2 and 3 of Appendix C does not apply to a distribution of a designated foreign security if all of the following apply:

(a) the distribution is made to a permitted client by a specified firm registrant;

(b) the issuer is a related issuer of the specified firm registrant; and

(c) the designated foreign security is issued or guaranteed by the government of a foreign jurisdiction.

“3A.5 Notice to permitted clients

A specified firm registrant that intends to rely on one or more of the exemptions described in sections 3A.2, 3A.3 or 3A.4 must deliver a notice to a permitted client, prior to or contemporaneously with the distribution of a designated foreign security to the permitted client, that describes the terms and conditions of the exemptions being relied on.

“3A.6 Manner of notice

The notice requirement under section 3A.5 is satisfied if either of the following apply:

(a) the specified firm registrant provides notice that the specified firm registrant intends to rely on the exemptions in section 3A.2, 3A.3 or 3A.4 for a distribution of a designated foreign security, including any future distributions of a designated foreign security, to the permitted client;

(b) If the notice referred to in subsection (a) is not provided to the permitted client,

(i) the specified firm registrant provides the notice required under section 3A.5 in the exempt offering document delivered to the permitted client for a distribution of a designated foreign security, or

(ii) the specified firm registrant provides the notice required under section 3A.5 in a document delivered to the permitted client that accompanies, but does not form part of, the exempt offering document.

“3A.7 Application

This Part does not apply to a distribution if a prospectus has been filed with a Canadian securities regulatory authority for the distribution.”.

2. This Regulation comes into force on (*insert here the date of coming into force of this Regulation*).