

NOTICE OF ADOPTION
NEW BRUNSWICK SECURITIES COMMISSION
LOCAL RULE 31-502 *SUPPLEMENTARY REGISTRATION REQUIREMENTS*

Introduction

The New Brunswick Securities Commission (Commission) approved Local Rule 31-502 *Supplementary Registration Requirements*, Companion Policy 31-502CP (LR 31-502) along with the repeal of Local Rule 31-501 *Registration Requirements* (LR 31-501). Subject to the approval of the Minister of Justice and Consumer Affairs, proposed LR 31-502 will come into force on 28 September 2009.

Contents of this Notice

This Notice gives an overview of the local requirements that are not captured by National Instrument 31-103 *Registration Requirements and Exemptions* (NI 31-103). The implementation of NI 31-103, or Registration Reform, is a key component of the Canadian Securities Administrators' project to streamline, consolidate, and harmonize registration rules across Canada.

Most local registration requirements are now contained in NI 31-103, effective 28 September 2009. However, there are still some local registration requirements that are not captured by NI 31-103. LR 31-502 will address these local registration requirements. The Commission therefore proposes to repeal LR 31-501 and replace it with LR 31-502.

Purpose of Proposed LR 31-502

Proposed LR 31-502 will address various local requirements, including the prohibition of registered individuals, whose principal regulator is the Commission, from acting as mortgage brokers. Certain financial institutions, such as banks, are exempted from these provisions.

The adoption of LR 31-502 will also require the repeal of Commission Blanket Order 32-501 *Registration Exemption Enabling a Corporation to Receive Directed Sales Commissions or Fees* and Blanket Order 33-501 *Calls to Residences by Registrants – Cold Calling*. There will be no change in the law as a result of these repeals since these provisions will be incorporated into LR 31-502.

Modifications to Proposed LR 31-502

On 19 January 2009, the Commission approved publication for comment of proposed LR 31-502. Notices were posted on the Commission's website on 27 March 2009 and in the 8 April 2009 edition of *The Royal Gazette*. The deadline for receiving comments was 26 May 2009. No comments were received.

A number of minor changes were also made to the previously published version of proposed LR 31-502. On 22 June 2009, the Commission concluded that these changes were not material and approved proposed LR 31-502 and the repeal of LR 31-501.

This Notice contains the final version of proposed LR 31-502 under Appendix "A" along with a blackline version of LR 31-502 reflecting the changes when compared to the previously published version under Appendix "B".

Questions

If you have any questions, please refer them to:

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NEW BRUNSWICK SECURITIES COMMISSION

LOCAL RULE 31-502
SUPPLEMENTARY REGISTRATION REQUIREMENTS

PART 1 DEFINITIONS AND INTERPRETATION

1(1) Definitions – In this Rule,

"MI 11-102" means Multilateral Instrument 11-102 *Passport System*; (NM 11-102)

"mortgage" includes any charge on any property for securing money or money's worth; (*hypothèque*)

"mortgage broker" means a person who does any of the following:

- (a) either directly or indirectly arranges for the investment by another person, in a mortgage, whether that investment is effected, or is intended to be effected, by making a loan secured by a mortgage, by selling a mortgage to that other person or by buying a mortgage for that other person,
- (b) lends money on mortgage and sells mortgages securing the loans,
- (c) as principal, buys and sells mortgages or who acts as an agent in the purchase or sale of a mortgage,
- (d) arranges or places mortgages for other persons, whether by obtaining loans for borrowers or by finding mortgage investments for lenders, or both,
- (e) registers a mortgage, a mortgage of a mortgage, or a transfer of a mortgage in the mortgage brokers's name where another person or

other persons have contributed mortgage moneys or are entitled to share the proceeds of the mortgage, or both,

- (f) for a reward or hope or promise thereof, administers a mortgage for or on behalf of any other person, or
- (g) holds himself or herself out as doing any of the things mentioned in clauses (a) to (f); (*courtier en hypothèques*)

"NI 31-103" means National Instrument 31-103 *Registration Requirements and Exemptions*; (*NC 31-103*)

"31-103 CP" means Companion Policy 31-103CP *Registration Requirements and Exemptions*; (*31-103 IC*)

1(2) Further definitions - Terms used in this Rule and that are defined in MI 11-102, National Instrument 14-101 *Definitions* or NI 31-103 have the same meanings as in those instruments.

PART 2 MARKET VALUE OF UNLISTED SECURITIES

2(1) Subject to subsections 2(2), 2(3) and 2(4), the market value of a security not listed and posted for trading on an exchange must be determined by assigning a reasonable value on the basis of values shown on published market reports or inter-dealer quotation sheets on the relevant date or last trading day prior to the relevant date.

2(2) A registrant may vary a value from that shown on published market reports or inter-dealer quotation sheets if, in light of all the circumstances, some other value would be more appropriate.

2(3) The Executive Director may require that a different value from that determined under subsections 2(1) or 2(2) be assigned if, in light of all the circumstances, some other value would be more appropriate.

2(4) If no published market report or inter-dealer quotation sheet exists with respect to the security, the security must be assigned a market value of zero unless, in the opinion of the Executive Director, assigning a higher market value would not be contrary to the public interest.

2(5) Nothing in this section requires a registrant to create a published market report or inter-dealer quotation sheet, if no published market report or inter-dealer quotation sheet exists on the relevant date or last trading day prior to the relevant date.

PART 3 PROHIBITION ON REGISTERED INDIVIDUALS ACTING AS MORTGAGE BROKERS

3(1) This Part does not apply to a registered individual who

- (a) is an employee or agent of
 - i. an insurance company licensed under the *Insurance Act*,
 - ii. a bank listed in schedule I, II, or III of the *Bank Act*(Canada),
 - iii. a loan company or trust company licensed under the *Loan and Trust Companies Act*, or
 - iv. a credit union as defined in the *Credit Unions Act*;
- (b) buys or sells mortgages or invests in mortgages through a mortgage broker, if that person does not engage in any of the activities set out in clauses (e) and (f) of the definition of mortgage broker; or
- (c) refers a person to a mortgage broker, if that person does not engage in any of the activities set out in clauses (b), (c), (d), (e) and (f) of the definition of mortgage broker.

3(2) Restriction - No registered individual, whose principal regulator is the New Brunswick Securities Commission, may act as a mortgage broker.

PART 4 REGISTRATION EXEMPTION ENABLING A CORPORATION TO RECEIVE DIRECTED SALES COMMISSIONS OR FEES

4(1) Application - This Part

- (a) applies solely to a corporation who receives a registered individual's commissions or fees; and
- (b) does not apply to any registrable activity other than the act of receiving a registered individual's commissions or fees.

4(2) Restriction - The registered individual's commissions or fees must be received by the corporation from a registered firm that is registered as a dealer and is a member in good standing of a self-regulatory organization that has been recognized by the Commission under paragraph 35(1)(b) of the *Securities Act*.

4(3) Exemption - A corporation described in subsections 4(1) and 4(2) is exempt from registration, subject to the following terms and conditions:

- (a) the corporation must be incorporated under the laws of Canada or a province or territory of Canada and all of its directors, officers and shareholders must be registered individuals affiliated with the same dealer;
- (b) notwithstanding paragraph 4(3)(a), a family member of a registered individual described in paragraph 4(3)(a) may be a director, officer or

shareholder of the corporation. For the purposes of this paragraph, a family member includes a spouse, child, parent, grandparent, brother, sister, uncle, aunt, niece, or nephew of the registered individual;

- (c) the corporation and dealer must have a written contract under which the dealer is liable for the acts or omissions of the corporation and the registered individual who is a director, officer, or shareholder of the corporation if these acts or omissions are related to or arise from the business of dealing or advising in securities;
- (d) upon the request of staff of the Commission, the corporation will make any and all of its books and records available for inspection by staff of the Commission;
- (e) neither the corporation nor the dealer will engage in any practice with respect to the payment or receipt of commissions or fees, as the case may be, that is prohibited by, or otherwise inconsistent with, any rule, regulation, by-law, policy, notice, practice, procedure, bulletin or other regulatory instrument of the dealer's self-regulatory organization; and
- (f) paragraph 4(3)(e) does not apply to any rule, regulation, by-law, policy, notice, practice, procedure, bulletin or other regulatory instrument of the dealer's self-regulatory organization that is suspended by the Commission or otherwise not in effect in New Brunswick.

PART 5 CALLS TO RESIDENCES BY REGISTRANTS - COLD CALLING

5(1) Exemption – Subject to subsection 5(2), the restrictions on a person attending at or telephoning to any residence, as set out in subsection 57(2) of the *Securities Act*, do not apply to a registered firm or to registered individual who trades securities or exchange contracts on behalf of the registered firm.

5(2) Order of the Executive Director - Notwithstanding subsection 5(1), the Executive Director may by order suspend, cancel, restrict or impose conditions upon the right of any registrant to:

- (a) call at any residence; or
- (b) telephone from within New Brunswick to any residence within or outside New Brunswick for the purpose of trading in any security, any exchange contract or any class of securities or exchange contracts.

5(3) Opportunity to be heard - The Executive Director shall not make an order under subsection 5(2) without giving the person or class of persons an opportunity to be heard.

PART 6 EXEMPTIONS

6(1) The Executive Director may grant an exemption from this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 7 REPEAL

7(1) New Brunswick Securities Commission Local Rule 31-501 *Registration Requirements* is repealed.

PART 8 EFFECTIVE DATE

8(1) This Instrument comes into force on the day National Instrument 31-103 *Registration Requirements and Exemptions* comes into force.

NEW BRUNSWICK
SECURITIES COMMISSION

COMMISSION DES
VALEURS MOBILIÈRES
DU NOUVEAU-BRUNSWICK



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Document N^o. : 31-502
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COMPANION POLICY 31-502

SUPPLEMENTARY REGISTRATION REQUIREMENTS

PART 1 GENERAL

1(1) Definitions - In this companion policy,

"Act" means the *Securities Act*, SNB c. S-5.5, as amended; (*Loi*)

"Commission" means the New Brunswick Securities Commission; (*Commission*)

"IIROC" means the Investment Industry Regulatory Organization of Canada;
(*OCRCVM*)

"LR 31-502" or the "instrument" means Local Rule 31-502 *Supplementary Registration Requirements*; (*RL 31-502*)

"MFDA" means the Mutual Fund Dealers' Association of Canada; (*ACCFM*)

"MI 11-102" means Multilateral Instrument 11-102 *Passport System*; (*NM 11-102*)

"NI 31-103" means National Instrument 31-103 *Registration Requirements and Exemptions*; (*NC 31-103*)

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"SN 32-701" means Staff Notice 32-701 *Exemptive Relief Applications from Registration Requirements. (AP 32-701)*

"SRO" means self-regulatory organization. (*OAR*)

1(2) Further definitions – Unless otherwise defined, terms used in this companion policy and that are defined in the *Act*, MI 11-102, National Instrument 14-101 *Definitions* or NI 31-103 have the same meanings as in those instruments.

PART 2 MORTGAGE BROKERING ACTIVITIES AND SUITABILITY FOR REGISTRATION

2(1) Suitability for registration - To address potential conflicts of interest and to ensure that a registrant can discharge its responsibilities to its clients, LR 31-502 specifically prohibits a registered individual, whose principal regulator is New Brunswick, from acting as a mortgage broker, unless otherwise exempted. 31-103CP, while not specifically prohibiting this practice, does state that a regulator will look at other employment or partnerships when assessing a registrant's suitability for registration.

Certain financial institutions, such as banks and certain referral activities are exempted from this requirement.

2(2) Application for an exemption - Commission staff will generally support an application for relief from the prohibition on mortgage brokering activities for an individual if the application conforms to the guidelines set out below:

- the application is made in accordance with SN 32-701
- the applicant can represent that:
 - all mortgage brokering activity will be supervised and approved by the registered firm;
 - policies and procedures are in place at the registered firm to prevent or minimize conflicts of interest; and
 - policies and procedures are in place to prevent or minimize the misuse of personal information.

2(3) Suitability generally - While LR 31-502 specifically places a prohibition on mortgage brokering activities, the Executive Director may also prohibit other types of employment or partnerships where the Executive Director is of the opinion that such employment or partnership negatively affects a registrant's suitability for registration.



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- (b) lends money on mortgage and sells mortgages securing the loans,
- (c) as principal, buys and sells mortgages or who acts as an agent in the purchase or sale of a mortgage,
- (d) arranges or places mortgages for other persons, whether by obtaining loans for borrowers or by finding mortgage investments for lenders, or both,

- (e) registers a mortgage, a mortgage of a mortgage, or a transfer of a mortgage in the mortgage brokers's name where another person or other persons have contributed mortgage moneys or are entitled to share the proceeds of the mortgage, or both,
- (f) for consideration a reward or hope or promise thereof, administers a mortgage for or on behalf of any other person, or
- (fg) holds himself or herself out as doing any of the things mentioned in clauses (a) to (ef); (*courtier en hypothèques*)

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~~v.~~ iiii. a credit union as defined in the *Credit Unions Act*;

(b) buys or sells mortgages or invests in mortgages through a mortgage broker ~~solely for his or her own account, if that person does not engage in any of the activities set out in clauses (e) and (f) of the definition of mortgage broker; or~~

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3(2) **Restriction** - No registered individual, whose principal regulator is the New Brunswick Securities Commission, may act as a mortgage broker.

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- (c) the corporation and dealer must have a written contract under which the dealer is liable for the acts or omissions of the corporation and the registered individual who is a director, officer, or shareholder of the corporation if these acts or omissions are related to or arise from the business of dealing or advising in securities;
- (d) upon the request of staff of the Commission, the corporation will make any and all of its books and records available for inspection by staff of the Commission;
- (e) neither the corporation nor the dealer will engage in any practice with respect to the payment or receipt of commissions or fees, as the case may be, that is prohibited by, or otherwise inconsistent with, any rule, regulation, by-law, policy, notice, practice, procedure, bulletin or other regulatory instrument of the dealer's self-regulatory organization; and
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