

Financial and Consumer Services Commission of New Brunswick (the Commission)

Coordinated Blanket Order 31-930

Citation: Exemption to allow Exempt Market Dealer Participation in Selling Groups in Offerings of Securities under a Prospectus

Date: June 27, 2024

Interpretation

1. Terms defined in the *Securities Act* (New Brunswick) (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* have the same meanings in this Order, unless otherwise defined in this Order or the context otherwise requires.
2. 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 New Brunswick securities law.

Background

3. 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).
4. 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.

5. 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.
6. The Commission has delegated to the Executive Director of Securities the Commission's power under section 208 of the *Act* to exempt, in whole or in part, a person or class of persons from any requirement of any National Instrument, Multilateral Instrument, or Local Instrument, subject to such terms and conditions considered appropriate.

Order

7. The Executive Director of Securities considering that to do so would not be prejudicial to the public interest, orders under subsection 208 of the *Act* that an exempt market dealer is exempt from the restrictions set out in subsection 7.1(2)(d) of NI 31-103 to act 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 (a) 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.

Effective Date and Term

8. This Order comes into effect on June 27, 2024.
9. This Order will expire on December 27, 2025.

For the Commission:

“original signed by”

To-Linh Huynh
Executive Director of Securities