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**NATIONAL INSTRUMENT 35-101
CONDITIONAL EXEMPTION FROM REGISTRATION FOR
UNITED STATES BROKER-DEALERS AND AGENTS**

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**NATIONAL INSTRUMENT 35-101
CONDITIONAL EXEMPTION FROM REGISTRATION FOR
UNITED STATES BROKER-DEALERS AND AGENTS**

PART 1 DEFINITIONS

1.1 Definitions - In this Instrument,

"agent" means a partner, officer, director or salesperson of a broker-dealer who is acting on behalf of a broker-dealer in effecting trades of securities;

"broker-dealer" means a "broker" or "dealer", as those terms are defined in the 1934 Act, that has its principal place of business in the United States of America;

"foreign security" means a security

- (a) that is listed for trading or quoted on an exchange or market outside of Canada; or
- (b) of an issuer that is not incorporated, continued or organized under the laws of Canada or a jurisdiction of Canada; and

"NASD" means the National Association of Securities Dealers in the United States of America.

PART 2 BROKER-DEALER EXEMPTION

2.1 Exemption from Dealer Registration Requirement - The dealer registration requirement does not apply to a broker-dealer if

- (a) the broker-dealer has no office or other physical presence in any jurisdiction in Canada;
- (b) the broker-dealer is trading in a foreign security;
- (c) the trading is with or for
 - (i) an individual ordinarily resident in the United States of America who is temporarily resident in the local jurisdiction and with whom the broker-dealer had a brokerdealer client relationship before the individual became temporarily resident in the local jurisdiction; or
 - (ii) an individual if the trade is for the individual's tax-advantaged retirement savings plan or with the individual's tax-advantaged retirement savings plan, and
 - (i) the plan is located in the United States of America,
 - (ii) the individual is a holder of or contributor to the plan, and
 - (iii) the individual was previously resident in the United States of America;

- (d) the broker-dealer has not advertised for or solicited new clients in the local jurisdiction;
- (e) the broker-dealer is a member of the NASD;
- (f) the broker-dealer has delivered, or immediately after the broker-dealer first relies on this section delivers, to the securities regulatory authority
 - (i) a notice that the broker-dealer is relying on an exemption from the registration requirement provided under this Instrument;
 - (ii) a statement of the broker-dealer certifying that the broker-dealer is registered in the state of the United States of America where the broker-dealer was located when the broker-dealer first relied on this section; and
 - (iii) an executed Form 35-101 F1 Submission to Jurisdiction and Appointment of Agent for Service of Process;
- (g) the broker-dealer has delivered a notice to the securities regulatory authority describing any criminal or quasi-criminal proceeding brought against the broker-dealer or its agents in any jurisdiction or foreign jurisdiction, or of any decision, order, ruling, or other requirement made with respect to or imposed on the broker-dealer or its agents in a jurisdiction or foreign jurisdiction as a result of any administrative, self-regulatory or regulatory action, hearing or proceeding involving fraud, theft, deceit, misrepresentation or similar conduct;
- (h) the broker-dealer has disclosed to the client that the broker-dealer and its agents are not subject to the full regulatory requirements otherwise applicable under local securities legislation; and
- (i) the broker-dealer, in the course of its dealings with clients, acts fairly, honestly and in good faith.

2.2 Termination Notice - A broker-dealer shall immediately notify the securities regulatory authority if the broker-dealer will no longer engage in trading or advising activities under section 2.1.

2.3 Exemption from Adviser Registration Requirement - The adviser registration requirement does not apply to advising activities of the broker-dealer if those activities are solely incidental to trading activities of the broker-dealer under section 2.1.

PART 3 AGENTS EXEMPTION

3.1 Agents Exemption - The dealer registration requirement does not apply to an agent if

- (a) the trading is on behalf of a broker-dealer that has notified the agent of its intent to rely on the exemption under section 2.1;
- (b) the agent has no office or other physical presence in any jurisdiction in Canada;
- (c) the agent is trading in a foreign security;

- (d) the trading is with or for
 - (i) an individual ordinarily resident in the United States of America who is temporarily resident in the local jurisdiction and with whom the broker-dealer on whose behalf the agent is trading had a broker-dealer client relationship before the individual became temporarily resident in the local jurisdiction; or
 - (ii) an individual if the trade is for the individual's tax-advantaged retirement savings plan or with the individual's tax-advantaged retirement savings plan, and
 - (i) the plan is located in the United States of America,
 - (ii) the individual is a holder of or contributor to the plan, and
 - (iii) the individual was previously resident in the United States of America;
- (e) the agent has not advertised for or solicited new clients in the local jurisdiction;
- (f) the agent has delivered, or immediately after the agent first relied on this section delivers, to the securities regulatory authority
 - (i) a notice that the agent is relying on this Instrument for an exemption from the registration requirement;
 - (ii) a statement of the agent certifying that the agent is registered in the state in the United States of America where the agent was located when the agent first relied on this section; and
 - (iii) an executed Form 35-101 F2 Submission to Jurisdiction and Appointment of Agent for Service of Process;
- (g) the agent has delivered a notice to the securities regulatory authority describing any criminal or quasi-criminal proceeding brought against the agent in any jurisdiction or foreign jurisdiction, or of any decision, order, ruling, or other requirement made with respect to or imposed on the agent in a jurisdiction or foreign jurisdiction as a result of any administrative, self-regulatory or regulatory action, hearing or proceeding involving fraud, theft, deceit, misrepresentation or similar conduct;
- (h) the agent, in the course of its dealings with the broker-dealer's clients, acts fairly, honestly and in good faith.

3.2

Termination Notice - An agent shall immediately notify the securities regulatory authority if the agent will no longer engage in trading or advising activities under section 3.1.

3.3 Exemption from Adviser Registration Requirement - The adviser registration requirement does not apply to advising activities of the agent if those activities are solely incidental to trading activities of the agent under section 3.1.

PART 4 EXEMPTION FROM PROSPECTUS AND UNDERWRITER REQUIREMENTS

4.1 Exemption from Prospectus and Underwriter Requirements - The prospectus requirement and underwriter registration requirement do not apply to a distribution of foreign securities if that distribution

- (a) is made by a broker-dealer or agent that is exempt from the adviser registration requirement and the dealer registration requirement under section 2.1 or 3.1; and
- (b) is made in compliance with all applicable
 - (i) U.S. federal securities laws, and
 - (ii) state securities legislation in the United States of America.

PART 5 EFFECTIVE DATE

5.1 Effective Date - This Instrument comes into force on 16 May 2005.

FORM 35-101F1
FORM OF SUBMISSION TO JURISDICTION AND APPOINTMENT
OF AGENT FOR SERVICE OF PROCESS BY BROKER-DEALER

Instructions: Complete this form for each of the jurisdictions in which the broker-dealer seeks the conditional exemption from registration in National Instrument 35-101 (the "exemption"). Insert the name of the jurisdiction at each "•".

1. Name of broker-dealer (the "Broker-Dealer");
2. Jurisdiction of incorporation of the Broker-Dealer;
3. Name of agent for service of process (the "Agent for Service");
4. Address for service of process on the Agent for Service in •;
5. The Broker-Dealer designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the Broker-Dealer's activities in • under the exemption, and irrevocably waives any right to raise as defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.
6. The Broker-Dealer irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of • and any administrative proceeding in •, in any Proceeding arising out of or related to or concerning the Broker-Dealer's activities in • under the exemption.
7. Until six years after the Broker-Dealer ceases to use the exemption, the Broker-Dealer shall file:
 - a. a new Submission to Jurisdiction and Appointment of Agent for Service of Process in this form at least 30 days before termination for any reason of this Submission to Jurisdiction and Appointment of Agent for Service of Process; and
 - b. An amended Submission to Jurisdiction and Appointment of Agent for Service of Process at least 30 days before any change in the name or above address of the Agent for Service.
8. This submission to Jurisdiction and Appointment of Agent for Service of Process is governed by and construed in accordance with the laws of •.

Dated:

(Signature of Broker-Dealer or
authorized signatory)

(Name and Title of Authorized
Signatory)

Acceptance

The undersigned accepts the appointment as agent for service of process on **(Insert name of Broker-Dealer)** under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service of Process.

Dated:

(Signature of Agent for Service or
authorized signatory)

(Name and Title of Authorized
Signatory)

FORM 35-101F2
FORM OF SUBMISSION TO JURISDICTION AND
APPOINTMENT OF AGENT FOR SERVICE OF PROCESS
BY AGENTS OF THE BROKER-DEALER

Instructions: Complete this form for each of the jurisdictions in which agents of the broker-dealer seek the conditional exemption from registration in National Instrument 35-101 (the "exemption"). Insert the name of the jurisdiction at each "•".

1. Name of the broker-dealer (the "Broker-Dealer");
2. Jurisdiction of incorporation of the Broker-Dealer;
3. Name(s) and address(es) of agent(s) of the Broker-Dealer filing this form (the "Broker-Dealer Agents");
4. Name of agent for service of process (the "Agent for Service");
5. Address for service of process on the Agent for Service in •;
6. Each Broker-Dealer Agent Filing Person designates and appoints the Agent for Service at the address of the Agent for Service stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the Broker-Dealer Agent's activities in • under the exemption, and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.
7. Each Broker-Dealer Agent irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of • and any administrative proceeding in •, in any Proceeding arising out of or related to or concerning the Broker-Dealer Agent's activities in • under the exemption.
8. Until the earlier of the termination of a Broker-Dealer Agent's position as an agent of the Broker-Dealer and six years after the Broker-Dealer ceases to use the exemption, the Broker-Dealer Agent shall file:
 - a. a new Submission to Jurisdiction and Appointment of Agent for Service of Process in this form at least 30 days prior to termination for any reason of this Submission to Jurisdiction and Appointment of Agent for Service of Process; and
 - b. an amended Submission to Jurisdiction and Appointment of Agent for Service of Process at least 30 days before any change in the name or above address of the Agent for Service.
9. This Submission to Jurisdiction and Appointment of Agent for Service of Process is governed by and construed in accordance with the laws of •.

Dated:

(Signature of Broker-Dealer Agent)

Dated:

(Signature of Broker-Dealer Agent)

Dated:

(Signature of Broker-Dealer Agent)

Dated:

(Signature of Broker-Dealer Agent)

Acceptance

The undersigned accepts the appointment as agent for service of process on **(Insert name(s) of Broker-Dealer Agent(s))** pursuant to the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service of Process.

Dated:

(Signature of Agent for Service or
authorized signatory)

(Name and Title of Authorized
Signatory)

**COMPANION POLICY 35-101CP
CONDITIONAL EXEMPTION FROM REGISTRATION FOR
UNITED STATES BROKER-DEALERS AND AGENTS**

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**COMPANION POLICY 35-101CP
CONDITIONAL EXEMPTION FROM REGISTRATION FOR
UNITED STATES BROKER-DEALERS AND AGENTS**

PART 1 INTRODUCTION

- 1.1 Introduction** - Cross-border trading activities between Canada and the United States of America often take place because of the movement of residents between the two countries. In order to facilitate certain cross-border trading activities that may arise between United States broker-dealers and their existing clients who are now located in Canada, the Canadian securities regulatory authorities have adopted National Instrument 35-101 Conditional Exemption From Registration for United States Broker-Dealers and Agents (the "Instrument") which provides certain broker-dealers, and their agents, resident in the United States of America with a conditional exemption from the applicable registration requirements and the prospectus requirement. This approach is consistent with the Instrument's underlying policy that investors will be relying primarily upon the regulation by securities regulators and statutory liability imposed by legislation in the broker-dealer's or agent's home jurisdiction for protection.

PART 2 GENERAL PRINCIPLES

- 2.1 General** - The Instrument provides that a United States broker-dealer and its agents may engage in two specific types of cross-border trading activities in foreign securities with an individual who was previously resident in the United States of America, and is now located in Canada, regardless of nationality. In Quebec, the term foreign securities includes futures.
- 2.2 Temporarily Resident** - The first category of activity provided for under clause 2.1(c)(i) and clause 3.1(d)(i) of the Instrument permits brokers-dealers and their agents to deal in foreign securities with an individual ordinarily resident in the United States of America who is temporarily resident in a Canadian jurisdiction and with whom the broker-dealer had a broker-dealer client relationship before the individual became temporarily resident in the Canadian jurisdiction. This aspect of the Instrument is intended to allow persons from the United States who are on a temporary work assignment in Canada, or who may be in Canada on vacation or for other reasons, to trade with their home broker-dealer and agent in the United States of America. The concept of "temporarily" as it appears in the National Instrument is based upon SEC Rule 15a-6 which exempts certain non-United States broker-dealers from registering under the 1934 Act.
- The Canadian Securities Administrators are of the view that a person that ceases to be "ordinarily resident" in the United States of America would not retain status as a United States resident "temporarily resident" in Canada under the Instrument.
- 2.3 Tax-Advantaged Plans** - The second category of activity provided for under clause 2.1(c)(ii) and clause 3.1(d)(ii) of the Instrument permits broker-dealers and their agents to deal in foreign securities with an individual who was previously resident in the United States of America and who is resident in a Canadian jurisdiction for trades for and with the individual's tax-advantaged retirement savings plan (for example, an Individual Retirement Account), if the plan is located in the United States and the individual is either a holder of,

or contributor to, the plan. Under laws of the United States of America, tax-advantaged retirement savings plans must be located in the United States of America and result in adverse tax consequences for United States individuals if collapsed. For these reasons, individuals are permitted by the Instrument to continue this type of trading activity with a broker-dealer and its agent in the United States of America whether or not there was a pre-existing relationship with the broker-dealer or agent while the individual was in the United States of America.

- 2.4 Prospectus and Underwriter Exemption** - Part 4 of the Instrument exempts a distribution of foreign securities by United States broker-dealers and their agents under the registration exemptions provided for in the Instrument from the prospectus requirement and the underwriter registration requirement. However, the distribution of foreign securities must comply with applicable United States federal securities law and state law requirements in the United States of America, which include securities registration and prospectus delivery.

PART 3 OPERATION OF EXEMPTIVE RELIEF

- 3.1 Affiliates** - Section 2.1 of the Instrument requires that the broker-dealer have "no office or physical presence in any jurisdiction". A broker-dealer that has a Canadian affiliate in any jurisdiction is still able to take advantage of the exemptions provided for under the Instrument. The Canadian affiliate, however, is not able to take advantage of the exemptions.
- 3.2 Limitation of Exemptions** - Any activity beyond the scope of the exemptions will constitute unregistered activity and will be subject to the applicable enforcement provisions provided for under Canadian securities legislation.
- 3.3 Retention of Authority** - Under Canadian securities legislation, each of the Canadian securities regulatory authorities retains the authority to revoke the exemptions as they apply to a broker-dealer or agent if the broker-dealer's or agent's conduct is considered to be contrary to the public interest.
- 3.4 Receipt of Documentation** - The Canadian securities regulatory authorities will acknowledge receipt of material sent by broker-dealers and agents under the Instrument.
- 3.5 Fees** - No fees will be imposed on broker-dealers or agents by the Canadian securities regulatory authorities under the exemptions provided for under the Instrument.

PART 4 INQUIRIES REGARDING PAST ACTIVITIES

- 4.1 Restricted Activities** - A Canadian securities regulatory authority will not make inquiries about any possible failure by broker-dealers or their agents to register that rely on the exemption from registration for their
- (a) trading activities and related incidental advising activities that may have been conducted with an individual from the United States of America that take place before the date which is 120 days after the coming into effect of the Instrument in the jurisdiction in which the Canadian securities regulatory authority is situated, if the individual

- (i) was temporarily resident in the jurisdiction and the broker-dealer or agent had a broker-dealer client relationship with the individual before the individual became temporarily resident in the jurisdiction, or
 - (ii) if the trades were for or with a tax-advantaged retirement savings plan located in the United States of America and the individual was either the holder of, or contributor to, the plan; and
- (b) any other trading and related incidental advising activities that may have been conducted in the jurisdiction before September 1, 1996.

4.2

Other Activities - A Canadian securities regulatory authority may make inquiries if it comes to its attention that a broker-dealer or its agent may have been engaged in improper activities in the jurisdiction in which the Canadian securities regulatory authority is situated beyond failing to register.