

REQUEST FOR COMMENTS

Notice and Request for Comment – Publication of proposed New Brunswick Securities Commission Local Rule 31-502 *Supplementary Registration Requirements* and Companion Policy 31-502CP (LR 31-502) along with the repeal of New Brunswick Securities Commission Local Rule 31-501 *Registration Requirements* (LR 31-501).

Introduction

On 19 January 2009, the New Brunswick Securities Commission (Commission) approved publication in order to obtain comments on proposed LR 31-502 and the repeal of LR 31-501.

The text of proposed LR 31-502 can be viewed following the Notice.

Substance and Purpose of Proposed LR 31-502

Proposed National Instrument 31-103 *Registration Requirements* (NI 31-103 or Registration Reform) will harmonize registration requirements across all Canadian Securities Administrator (CSA) jurisdictions. The implementation of NI 31-103 is a key component of CSA's project to streamline, consolidate, and harmonize registration rules across Canada.

In New Brunswick, most local registration requirements are currently housed in LR 31-501. With Registration Reform, most of these local registration requirements will now be in NI 31-103. The adoption of local registration requirements to support NI 31-103 may also be required in some CSA jurisdictions. Since a number of local requirements are not captured by NI 31-103 in New Brunswick, the Commission proposes to repeal LR 31-501 and replace it with LR 31-502.

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. Since there is no current legislation respecting mortgage brokers in New Brunswick, there is greater concern for potential conflicts of interest and the need to ensure that a registrant also acting as a mortgage broker can discharge his or her responsibilities to their clients. 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.

Request for Comment

The Commission seeks comments on proposed LR 31-502 and the repeal of LR 31-501.

How to Provide your Comments

Comments are to be provided, in writing, by no later than 26 May 2009 to:

Secretary
New Brunswick Securities Commission
85 Charlotte Street, Suite 300
Saint John, N.B. E2L 2J2
Telephone: 506-658-3060
Toll Free: 866-933-2222 (within NB only)
Fax: 506-658-3059
E-mail: information@nbsc-cvmnb.ca

We cannot keep submissions confidential. A summary of the written comments received during the comment period be published.

Questions

If you have any questions, please refer them to:

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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 made, or is intended to be made, 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) for consideration, administers a mortgage for or on behalf of any other person, or
- (f) holds himself or herself out as doing any of the things mentioned in clauses (a) to (e); (*courtier en hypothèques*)

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

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

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. a bank listed in schedule I, II, or III of the *Bank Act*(Canada),
- ii. a loan company or trust company licensed under the *Loan and Trust Companies Act*, or
- iii. 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.

(c) refers a person to a mortgage broker, if the registered individual does not engage in any of the activities set out in clauses (b), (c), (d) and (e) 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 EFFECTIVE DATE

7(1) This Rule comes into force on ●.



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COMPANION POLICY

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*;
(*NC 31-103*)

“31-103CP” means Companion Policy 31-103 *Registration Requirements*;
(*31-103IC*)

“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.

**PART 3 REGISTRATION EXEMPTION REGARDING DIRECTED SALES
 COMMISSIONS OR FEES**

3(1) Exemption requirements- The Commission has determined, subject to terms and conditions described in the instrument, that it would not be prejudicial to the public interest to exempt a corporation controlled by a registered individual from the registration requirements of the *Act* for the sole purpose of permitting the corporation to receive commissions and fees from a registered firm that is registered as a dealer and is a member in good standing of a SRO that has been recognized under paragraph 35(1)(b) of the *Act* as these commissions or fees relate to the registered individual's trading or advising in securities.

Currently the only recognized SROs in New Brunswick are the MFDA and IIROC.

It is incumbent upon the registered individual who intends to rely on this Part to ensure that this Part does not conflict with any rules, regulations, by-laws, policies, notices, practices, procedures, bulletins or other regulatory instruments of the relevant SRO that are in effect.

PART 4 COLD CALLING BY REGISTRANTS

4(1) Act requirements - Part 5 of LR 31-502 should be read in conjunction with section 57 of the *Act*.