

1.1.2 OSC Staff Notice 32-505 – Conditional Exemption from Registration for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario

**OSC STAFF NOTICE 32-505
CONDITIONAL EXEMPTION FROM REGISTRATION FOR UNITED STATES BROKER-DEALERS
AND ADVISERS SERVICING U.S. CLIENTS FROM ONTARIO**

April 23, 2015

Introduction

The Ontario Securities Commission (the **Commission**) is publishing proposed OSC Rule 32-505 *Conditional Exemption from Registration for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario* (the **Rule**). The Commission is relying on paragraph 143.2(5)(b) of the *Securities Act* (Ontario) (the **Act**) to make an expedited rule, and for this reason, the Rule is not being published for comment.

The Rule provides exemptions from the relevant dealer and adviser registration requirements under the Act, subject to certain conditions, for broker-dealers (**U.S. broker-dealers**) and advisers (**U.S. advisers**) that are trading to, with, or on behalf of, clients that are resident in the USA (**U.S. clients**), or acting as advisers to U.S. clients, but that trigger the requirement to register as a dealer or adviser in Ontario because they have offices or employees in Ontario. The exemptions in the Rule are not available to U.S. broker-dealers that trade to, with, or on behalf of, persons or companies that are resident in Ontario (**Ontario residents**), or U.S. advisers that act as advisers to Ontario residents.

Contents of this notice

This notice gives an overview of the Rule and its Companion Policy (defined below) and contains the following annexes:

- Annex A – OSC Rule 32-505 *Conditional Exemption from Registration for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario*
- Annex B – Companion Policy 32-505CP *Conditional Exemption from Registration for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario* (the **Companion Policy**)

Adoption of the Amendments

Under section 143.3 of the Act, the Rule and other required materials were delivered to the Minister of Finance on April 23, 2015. The Rule grants an exemption that is not likely to have a substantial effect on the interests of persons or companies other than those who benefit under it. Accordingly, the Commission is relying on paragraph 143.2(5)(b) of the Act to make an expedited rule. An expedited rule does not require publication for comment before it is approved.

The Rule requires the approval of the Minister of Finance. Unless the Minister rejects the Rule or returns it to the Commission for further consideration, it will come into force no later than July 7, 2015. The Companion Policy will come into effect on the same date.

Background and Purpose

The Commission is aware that U.S. broker-dealers and U.S. advisers, subject to federal securities law in the USA, are not registered, or relying on an exemption, in Ontario, but have offices or employees in Ontario and are (i) trading to, with, or on behalf of, U.S. clients, or (ii) acting as an adviser to U.S. clients. The U.S. broker-dealer firms do not trade to, with, or on behalf of, Ontario residents, and the U.S. adviser firms do not act as advisers to Ontario residents. These firms may be subsidiaries of, affiliates to, or have arrangements with registered firms in Ontario.

Registration as an adviser or a dealer, or an exemption from such registration requirement, is required for a firm and its representatives who act as an adviser or a dealer, as applicable, in Ontario, even if the firm's clients are not resident in Ontario; therefore, U.S. broker-dealers and U.S. advisers may be acting off side Ontario securities law by not being registered or relying on an exemption from the requirement to register.

Over the last decade, the Commission has, subject to certain conditions, exempted U.S. broker-dealers and U.S. advisers, with offices in Ontario, from the requirement to register, on the basis that they:

- trade to, with, or on behalf of, only U.S. clients or act as an adviser only to U.S. clients
- are appropriately registered (or exempt from registration) in the USA
- are subject to the oversight of an acceptable securities regulator in the USA

On March 26, 2015, members of the Canadian Securities Administrators (the **CSA**), except Ontario, issued parallel orders of general application (the **Blanket Orders**) granting exemptions from the requirement to register as a dealer to U.S. broker-dealers and their representatives operating from the applicable local jurisdiction and an exemption from the requirement to register as an adviser to U.S. advisers and their representatives operating from the applicable local jurisdiction, if they comply with the conditions in the Blanket Orders.

Orders of general application are not authorized under Ontario securities law. In order to harmonize with the action taken by the CSA, the Commission is making an expedited rule that will grant an exemption from the dealer and adviser registration requirements, as applicable, under the Act, on substantially the same conditions as the Blanket Orders.

In CSA Staff Notice 32-301 *Omnibus/Blanket Orders Exempting Certain U.S. Broker-Dealers and U.S. Advisers from the Requirement to Register in Respect of Trades and Advice for U.S. Resident Clients* (the **CSA Notice**), also published on March 26, 2015, Commission staff stated that they would consider recommending that the Commission grant exemptive relief to a U.S. broker-dealer or a U.S. adviser on substantially the same terms as the Blanket Orders, if an application for relief was filed. Instead, the Commission is codifying the prior line of exemptive relief orders (referenced above) by making this Rule. An expedited rule is also the most efficient way to harmonize with the CSA while imposing minimal costs and regulatory burden on firms affected by this Rule, and it allows the Commission to have regulatory oversight over the firms that rely on the exemptions in the Rule as these firms will be subject to the provisions in the Act applicable to a “market participant”, including those set out in Part VII (record-keeping and compliance reviews). In addition, the form submitted to the Commission under the Rule will identify the firms, and individuals acting on their behalf, who are operating out of Ontario, and whether these firms are affiliated with any Canadian registrants.

The CSA expects firms relying on certain exemptions from the dealer or adviser registration requirements to comply with any applicable Canadian federal laws relating to terrorist financing and United Nations sanctions. For more information see CSA Staff Notice 31-317 (Revised) *Reporting Obligations Related to Terrorist Financing*.

Summary of the Rule

If approved, the Rule will provide exemptions from the relevant dealer and adviser registration requirements under the Act, subject to certain conditions. There may be additional exemptions in securities legislation. If the U.S. adviser or U.S. broker-dealer is exempt from registration, the individuals acting on its behalf are also exempt from registration.

Registration as an adviser or a dealer, or an exemption from such registration, is required for a firm and its representatives who act as an adviser or a dealer, as applicable, in Ontario even if the firm’s clients are not resident in Ontario. The exemptions in this Rule will only be effective as of the date that they are relied on. Reliance on the exemptions in this Rule will not cure any prior non-compliance with Ontario securities law.

To undertake the activities contemplated in the Rule, a firm and its representatives must be either appropriately registered under U.S. securities law or have available to them an exemption from the applicable registration requirement. We understand that the U.S. broker-dealers are members of the Financial Industry Regulatory Authority (**FINRA**) and the U.S. advisers are subject to registration with the United States Securities and Exchange Commission (**SEC**) or are operating under an exemption from registration with the SEC. The Commission has a supervisory memorandum of understanding (**MOU**) in place with FINRA and the SEC for mutual cooperation and information sharing, including oversight of the relevant U.S. broker-dealer or U.S. adviser.

If a U.S. adviser or U.S. broker-dealer with offices or employees in Ontario is not able to comply with the conditions of the relevant exemption from adviser or dealer registration in the Rule, it must register as an adviser or dealer in Ontario, rely on another applicable exemption, apply for exemptive relief, or cease operations in Ontario.

Authority for the proposed amendments

The rule making authority for the Rule is in paragraph 8 of subsection 143(1) of the Act. Paragraph 143.2(5)(b) of the Act, as discussed above, permits the Commission to make the Rule without publishing the Rule for comment.

Where to find more information

The Rule and the Companion Policy are available at: www.osc.gov.on.ca

Questions

Please refer your questions to the following Commission staff:

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Ontario Securities Commission
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ONTARIO SECURITIES COMMISSION RULE 32-505
CONDITIONAL EXEMPTION FROM REGISTRATION FOR UNITED STATES BROKER-DEALERS
AND ADVISERS SERVICING U.S. CLIENTS FROM ONTARIO

PART 1 DEFINITIONS

1. Definitions

In this Rule,

“Ontario resident” means, for a U.S. adviser or U.S. broker-dealer, a person or company that is resident in Ontario;

“representative” means, for a U.S. adviser or U.S. broker-dealer, an individual that acts on behalf of the U.S. adviser or U.S. broker-dealer;

“U.S. adviser” means a person or company that is

- (a) registered as an adviser under U.S. federal securities law, or
- (b) exempt from registration as an adviser under U.S. federal securities law;

“U.S. broker-dealer” means a person or company registered as a “broker-dealer” under U.S. federal securities law; and

“U.S. client” means, for a U.S. adviser or U.S. broker-dealer, a client that is resident in the United States of America, its territories and possessions, any State of the United States of America and the District of Columbia.

PART 2 REGISTRATION EXEMPTIONS

2. Dealer registration exemption

- (1) The dealer registration requirement does not apply to a U.S. broker-dealer in respect of a trade in securities made by the U.S. broker-dealer to, with, or on behalf of, a U.S. client, if at the time of the trade, all of the following apply:
 - (a) under U.S. federal securities law, the U.S. broker-dealer is permitted to trade to, with, or on behalf of, the U.S. client;
 - (b) any representative of the U.S. broker-dealer that trades to, with, or on behalf of, the U.S. client is registered under U.S. federal securities law;
 - (c) in connection with the trade, the U.S. broker-dealer and any representative of the U.S. broker-dealer do not trade securities to, with, or on behalf of, an Ontario resident, or act as an adviser to an Ontario resident, unless the U.S. broker-dealer and the representative
 - (i) are registered under the Act in the appropriate category of registration, or
 - (ii) rely on an exemption from the applicable dealer registration requirement or adviser registration requirement;
 - (d) the U.S. broker-dealer has submitted a completed Form 32-505F1 *Information Report for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario* to the Commission.
- (2) The exemption from registration in this Rule is not an applicable exemption for purposes of subparagraph (1)(c)(ii).
- (3) A U.S. broker-dealer must notify the Commission of any change in the information previously submitted under paragraph (1)(d) or this subsection within 10 days of the change.

3. Adviser registration exemption

- (1) The adviser registration requirement does not apply to a U.S. adviser in respect of it acting as an adviser in respect of securities to a U.S. client, if at, or prior to, the time of providing the advice, both of the following apply:
 - (a) under U.S. federal securities law, the U.S. adviser is permitted to act as an adviser to the U.S. client;

- (b) the U.S. adviser has submitted a completed Form 32-505F1 *Information Report for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario* to the Commission.
- (2) A U.S. adviser must notify the Commission of any change in the information previously submitted under paragraph (1)(b) or this subsection within 10 days of the change.

FORM 32-505F1
INFORMATION REPORT FOR UNITED STATES BROKER-DEALERS
AND ADVISERS SERVICING U.S. CLIENTS FROM ONTARIO

Complete the applicable sections.

Indicate if you intend to rely on any of the following:

- the dealer registration exemption in Part 2 of the Rule.
- the adviser registration exemption in Part 3 of the Rule.

Indicate the jurisdiction(s) in which:

- (i) the U.S. broker-dealer has representatives that trade to, with, or on behalf of, U.S. clients, or
- (ii) the U.S. adviser has representatives who are acting as advisers to U.S. clients.

AB	BC	MB	NB	NL	NS	NT	NU	ON	PE	QC	SK	YT
<input type="checkbox"/>												

[Name of U.S. broker-dealer or U.S. adviser]

[Address]

[Telephone number]

[NRD number, if applicable]

[Name of registered firm in a jurisdiction of Canada with which the U.S. broker-dealer or U.S. adviser is affiliated, has a business arrangement, or shares employees or offices]

[NRD number of above noted registered firm]

[Name of individual responsible for ensuring conditions to use this exemption are met]

[Telephone number for responsible individual]

[E-mail address for responsible individual]

[Names of representatives who are acting in Ontario as advisers to U.S. clients, or that, in Ontario, trade to, with, or on behalf of, U.S. clients. Use separate sheet if necessary]

[Date]

**ONTARIO SECURITIES COMMISSION
COMPANION POLICY 32-505CP
CONDITIONAL EXEMPTION FROM REGISTRATION FOR UNITED STATES BROKER-DEALERS
AND ADVISERS SERVICING U.S. CLIENTS FROM ONTARIO**

This Companion Policy sets out how we interpret or apply OSC Rule 32-505 *Conditional Exemption from Registration for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario* (the **Rule**).

Unless defined in the Rule, terms used in the Rule and in this Companion Policy have the meaning given to them in OSC Rule 14-501 *Definitions* which includes certain terms that are defined in the *Securities Act* (Ontario) (the **Act**), the Regulation and National Instrument 14-101 *Definitions*.

Registration as an adviser or a dealer, or an exemption from such registration, is required for a firm and its representatives who act as an adviser or a dealer, as applicable, in Ontario even if the firm's clients are not resident in Ontario. The Rule provides exemptions from the relevant dealer and adviser registration requirements under the Act, subject to certain conditions. There may be additional exemptions in securities legislation. If the U.S. adviser or U.S. broker-dealer is exempt from registration, the individuals acting on its behalf are also exempt from registration.

The exemptions under the Rule are not available where trading or advising involves Ontario residents, whether directly or indirectly. In considering the availability of the exemptions under this Rule, we will look to the substance of trades or advice in reliance on this Rule. For example, a U.S. broker-dealer relying on the exemption in this Rule from the dealer registration requirement must not trade, directly or indirectly to, with, or on behalf of, an Ontario resident unless the U.S. broker-dealer is appropriately registered in Ontario to trade with the Ontario resident or has an available exemption, such as the exemption from the dealer registration requirement for trades with a permitted client in section 8.18 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

Where a trade is in respect of a security that is listed, quoted or traded on a Canadian marketplace, access requirements of Canadian marketplaces trading these exchange-traded securities require that the execution of the trade in this security on the Canadian marketplace must be made by the U.S. broker-dealer through an investment dealer that is registered in a jurisdiction of Canada and a member of the Investment Industry Regulatory Organization of Canada.

By relying on the exemption from the dealer or adviser registration requirement in the Rule, the U.S. broker-dealer or U.S. adviser, as applicable, will become a "market participant" as defined under subsection 1(1) of the Act. Market participants are subject to the provisions in the Act applicable to a "market participant", including those set out in Part VII (Record-Keeping and Compliance Reviews). Among other requirements, as a "market participant", the U.S. broker-dealer or U.S. adviser, as applicable, is required to comply with the record keeping and provision of information requirements in section 19 of the Act, which includes a requirement that the firm keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs and to deliver such records to the Commission if required. In addition, as a "market participant" the U.S. broker-dealer or U.S. adviser, as applicable, may be subject to a compliance review under section 20 of the Act.