

## Headnote

Multilateral Instrument 11-102 *Passport System* - National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Under sections 4.1(1)(a) and 4.1(1)(b) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, a registered firm must not permit an individual to act as a dealing, advising or associate advising representative of the registered firm if the individual acts as an officer, partner or director of another registered firm that is not an affiliate of the first-mentioned firm, or if the individual is registered as a dealing, advising or associate advising representative of another registered firm - the firms require relief for a limited period of time – the dually registered individual will have sufficient time to adequately serve both firms – as one firm has wound down its operations and does not carry on registerable activities, conflicts of interest are unlikely to arise - the firms have policies in place to handle potential conflicts of interest - the firms are exempted from the prohibition against dual registration.

## Applicable Legislative Provisions

Multilateral Instrument 11-102 *Passport System*, s. 4.7

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*

National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, ss.4.1, 15.1

**Citation: Re Andylan Capital Strategies Ltd., 2016 ABASC 37**

**Date: 20160205**

In the Matter of  
the Securities Legislation of Alberta and Ontario (the **Jurisdictions**)

and

In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
Andylan Capital Strategies Ltd. (**Andylan**), Palisade Capital Management Ltd. (**Palisade**) and  
John McAleer (**McAleer**) (collectively, the **Filers**)

## Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Makers**) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for exemptive relief from the restriction in sections 4.1(1)(a) and

4.1(1)(b) of National Instrument 31-103 *Registration Requirements Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) to permit McAleer to act as an advising representative, ultimate designated person, chief compliance officer, director and officer of Andydan and to permit McAleer to act as an advising representative, dealing representative and officer of Palisade for a limited period of time pending the surrender of the registration of Andydan (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (i) the Alberta Securities Commission is the principal regulator (the **Principal Regulator**) for this application;
- (ii) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon by the Filers in British Columbia and Manitoba; and
- (iii) the decision is the decision of the Principal Regulator and also evidences the decision of the securities regulatory authority or regulator in Ontario.

### **Interpretation**

Terms defined in MI 11-102, NI 31-103 and National Instrument 14-101 *Definitions* have the same meaning in this decision unless otherwise defined herein.

### **Representations**

This decision is based on the following facts represented by the Filers:

1. Andydan is a company organized under the laws of Alberta, with a head office in Alberta. Andydan is currently registered in the categories of investment fund manager and portfolio manager under securities legislation in Alberta.
2. Palisade is a company organized under the laws of Alberta, with a head office in Alberta. Palisade is registered in the categories of investment fund manager, portfolio manager and exempt market dealer under securities legislation in Alberta and in the category of exempt market dealer under the securities legislation in British Columbia, Manitoba and Ontario.
3. The Filers are not in default of any requirement of securities legislation in any jurisdiction in which they are registered.
4. McAleer is a director and officer of Andydan and serves as an advising representative, ultimate designated person and chief compliance officer of Andydan.
5. Subject to regulatory approval, McAleer has agreed to act as an advising representative, dealing representative and officer of Palisade.

6. AndyLAN wound up its client base and attendant obligations on or about December 10, 2015. AndyLAN acted as a sub-advisor for Palisade pursuant to a sub-advisory agreement between the parties. AndyLAN and Palisade terminated the sub-advisory agreement by mutual consent effective December 31, 2015. AndyLAN intends to request the surrender and consent to the suspension of its registration in Alberta.
7. The Filers have in place policies and procedures to address any conflicts of interest that may arise as a result of the dual registration. The activities of AndyLAN are administrative in nature and do not include registerable activities of any kind.
8. Furthermore, Palisade has compliance and supervisory policies and procedures in place to monitor the conduct of its representatives (including McAleer) and to ensure that Palisade can deal appropriately with any conflicts of interest that may arise.
9. McAleer will have sufficient time and resources to adequately meet his obligations to each firm.
10. In the absence of the Exemption Sought, McAleer would be prohibited under sections 4.1(1)(a) and 4.1(1)(b) of NI 31-103 from acting as a director, officer and advising representative of AndyLAN while also acting as an officer, advising representative and dealing representative of Palisade.

### **Decision**

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make this decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that:

- (a) upon approval of McAleer's registration with Palisade, all registerable activities of McAleer are carried on through Palisade and AndyLAN will continue not to perform registerable activities;
- (b) within 30 days of the decision, AndyLAN requests the surrender and consents to the suspension of its registration in Alberta; and
- (c) within 120 days of this decision, AndyLAN files all of the documentation required in connection with the surrender of its registration in Alberta.

*"original signed by"*

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Lynn Tsutsumi, CA  
Director, Market Regulation