

# ALBERTA SECURITIES COMMISSION

**Citation: Re Richardson GMP Limited, 2017 ABASC 157**

**Date: 20171005**

In the Matter of  
the Securities Legislation of Alberta  
(the **Jurisdiction**)

and

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

and

In the Matter of  
Richardson GMP Limited (**RGMP Canada**) and  
Richardson GMP (USA) Limited (**RGMP USA**)  
(the **Filers**)

## Decision

### **Background**

1. The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction for an order under section 144(1) of the *Securities Act* (Alberta) (the **Act**):
  - (a) exempting RGMP USA and those of its individual representatives who are also registered under the Act as dealing representatives in the approval category of portfolio management of RGMP Canada (the **Dual Representatives**) from the adviser registration requirement of section 75(b) of the Act in respect of advice provided by the Dual Representatives, acting on behalf of RGMP USA, to individuals formerly resident in the United States (**US**) (**Ex-US Clients**) if the advice is in respect of a US-domiciled tax-advantaged retirement savings, education savings or disability savings plan (**US RSP**) owned by the Ex-US Client (the **Ex-US Client Exemptive Relief**); and
  - (b) exempting RGMP USA and the Dual Representatives from the adviser registration requirement of section 75(b) of the Act in relation to wealth management services to clients resident in the US (**US Clients**) (the **US Client Exemptive Relief**).
2. Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):
  - (a) the Alberta Securities Commission (the **Commission**) is the principal regulator for this application; and

- (b) the Filers have provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* is intended to be relied upon in British Columbia, Manitoba, Saskatchewan, Québec, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Yukon, Northwest Territories and Nunavut (the **Passport Jurisdictions** and, together with Alberta, the **Exemption Jurisdictions**).

### Interpretation

3. Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this order, unless otherwise defined.

### Representations

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

4. RGMP Canada is a privately-held corporation incorporated under the laws of Canada. Its head office is located in Toronto, Ontario.
5. RGMP Canada carries on business in the Exemption Jurisdictions, as well as in Ontario, with offices located in Alberta, British Columbia, Manitoba, Ontario, Québec, Nova Scotia and Prince Edward Island.
6. RGMP Canada provides wealth management services to residents of Canada, including financial planning, wills and estates planning, tax planning, insurance planning, and brokerage services.
7. RGMP Canada is registered as an investment dealer in the Exemption Jurisdictions and Ontario and as a derivatives dealer in Québec. It is a dealer member of the Investment Industry Regulatory Organization of Canada (**IIROC**).
8. RGMP Canada is not in default of securities legislation in any jurisdiction of Canada.
9. RGMP Canada does not trade, or provide advice with respect to the trading, in securities to, with, or on behalf of US Clients other than in respect of Canadian-domiciled tax-advantaged retirement savings, education savings or disability savings plans (**Canadian RSPs**) held by US Clients who were formerly resident in Canada and who have moved to the US with Canadian RSPs.
10. RGMP Canada does not carry on the business of a registered broker-dealer or registered investment adviser in the US and therefore is not, and is not required to be, registered under US securities law.
11. RGMP USA is a wholly-owned subsidiary of RGMP Canada incorporated under the laws of Canada. Its head office is located in Toronto, Ontario.
12. RGMP USA has no physical presence in the US, but carries on business in the Exemption Jurisdictions and Ontario. RGMP USA and RGMP Canada operate their business out of the same offices in Alberta, British Columbia, Manitoba, Ontario, Québec, Nova Scotia and Prince Edward Island.

13. RGMP USA provides wealth management services to US Clients in reliance upon the Commission's Blanket Order 31-530 *Trades and Advice for US-Resident Clients: Dealer and Adviser Registration Exemptions* (**BOR 31-530**) and parallel orders issued by the securities regulatory authorities in the Passport Jurisdictions (the **Parallel Orders**), including financial planning, wills and estates planning, tax planning, insurance planning and brokerage services.
14. RGMP USA is registered with the US Securities and Exchange Commission (**SEC**) as an investment adviser under the *Investment Advisers Act of 1940* (United States) (the **1940 Act**).
15. RGMP USA is not in default of securities legislation of any jurisdiction of Canada or US securities law.
16. RGMP USA is not registered under the securities laws of any jurisdiction of Canada.
17. RGMP USA has engaged Pershing Advisor Solutions LLC (**Pershing Advisor Solutions**), a Delaware limited liability company, to provide investment advisory and prime brokerage services directly or through its affiliate Pershing LLC (**Pershing**), a Delaware limited liability company.
18. Pershing Advisor Solutions is registered with the SEC as a broker-dealer and is a member of the Financial Industry Regulatory Authority (**FINRA**). Pershing is registered with the SEC as a broker-dealer and is a member of FINRA and the New York Stock Exchange.
19. Each of the Dual Representatives acts on behalf of both Filers in one of the Filers' offices located in an Exemption Jurisdiction or in Ontario. Each Dual Representative is registered as a dealing representative of RGMP Canada in one or more of the Exemption Jurisdictions or Ontario.
20. None of the Dual Representatives is in default of securities legislation of any jurisdiction of Canada or US securities law.
21. Each Dual Representative, when acting on behalf of RGMP Canada, advises only clients of RGMP Canada resident in the Exemption Jurisdiction(s) of his or her registration and US Clients formerly resident in Canada in respect of their Canadian RSPs.
22. When acting on behalf of RGMP USA, each Dual Representative currently advises only US Clients.
23. RGMP USA and the Dual Representatives, acting on behalf of RGMP USA, seek to advise Ex-US Clients with respect to the trading of securities in their US RSPs despite their residency in Canada. A Dual Representative, acting on behalf of RGMP USA, will only advise Ex-US Clients resident in an Exemption Jurisdiction if he or she is registered as a dealing representative of RGMP Canada in that Exemption Jurisdiction.
24. The advice that RGMP USA provides to Ex-US Clients will be ancillary to RGMP USA's principal business of advising US Clients.

25. RGMP USA expects that the amount of revenue derived from Ex-US Clients in the Exemption Jurisdictions will represent approximately 8% of its total revenue. If the revenue derived from Ex-US Clients exceeds 10% of its total revenue, RGMP USA will advise the Commission of this change.
26. The Dual Representatives have the proficiency, education and experience to provide advice to Ex-US Clients with respect to the trading of securities in their US RSPs.
27. Pershing Advisor Solutions and Pershing will provide trade execution services for all Ex-US Clients of RGMP USA in respect of their US RSPs pursuant to the exemption from the dealer registration requirement of the securities legislation of each Exemption Jurisdiction under section 8.18 of National Instrument 31-103 (**NI 31-103**) *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.
28. When providing advice to Ex-US Clients with respect to the trading of securities in their US RSPs, RGMP USA and the Dual Representatives will comply with US securities law.

### **Decision**

29. The principal regulator is satisfied that the decision meets the test set out in the Act for the principal regulator to make the decision.
30. The decision of the principal regulator under section 144(1) of the Act is that:
  - (a) the Ex-US Client Exemptive Relief is granted provided that:
    - (i) RGMP USA does not advertise for or solicit new clients in the Exemption Jurisdictions;
    - (ii) RGMP USA remains registered as an investment adviser with the SEC under the 1940 Act;
    - (iii) RGMP USA notifies the Commission promptly of any restrictions or conditions placed on its registration with the SEC or any sanctions imposed on it in connection with its activities as an investment adviser under a settlement agreement entered into with the SEC or an order issued by the SEC;
    - (iv) RGMP USA executes any trade made in respect of any US RSPs on behalf of an Ex-US Client through a dealer registered under the securities legislation of the relevant Exemption Jurisdiction or exempted from registration under the securities legislation of the relevant Exemption Jurisdiction;
    - (v) RGMP USA and each of the Dual Representatives remain in compliance with any applicable adviser licensing or registration requirements under applicable US securities law;
    - (vi) RGMP Canada remains registered under the Act as an investment dealer and remains a dealer member of IIROC;

- (vii) each Dual Representative is registered under the Act as a dealing representative in a category that would permit it to advise Ex-US Clients with respect to the trading of securities in their US RSPs in compliance with the Act, if the US RSPs were instead tax-advantaged retirement savings plan located in Canada;
- (viii) RGMP USA discloses to Ex-US Clients that it and the Dual Representatives are not subject to full regulatory requirements otherwise applicable under the Act;
- (ix) RGMP USA and the Dual Representatives, in the course of their dealings with Ex-US Clients, act fairly, honestly and in good faith;
- (x) RGMP USA:
  - (A) enters into customer agreements and associated account opening documentation with all Ex-US Clients which will provide that all communications with Ex-US Clients will be through RGMP USA and the Dual Representatives, and will be under RGMP USA branding; and
  - (B) provides all Ex-US Clients with disclosure that explains the relationship between RGMP USA and RGMP Canada; and
- (b) the US Client Exemptive Relief is granted provided that RPMG USA and the Dual Representatives comply with the conditions set out in BOR 31-530 or a relevant Parallel Order, as applicable, where advice is given to a US Client, with the exception of any condition in such order prohibiting the provision of advice to an Ex-US Client resident in an Exemption Jurisdiction.

31. This decision will terminate on the earlier of:

- (a) five years after the date of this decision; and
- (b) the coming into force of a change in Alberta securities law exempting RGMP USA from the registration requirement in the Act in connection with the advice it provides to an Ex-US Client with respect to US RSPs.

**For the Commission:**

*“original signed by”*

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Stan Magidson  
Chair & CEO

*“original signed by”*

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Tom Cotter  
Vice-Chair