

ALBERTA SECURITIES COMMISSION

ORDER

Certain MFDA Members: Trades in Non-Mutual Fund Securities

Background

1. Section 16(c) of the *Alberta Securities Commission Rules (General)* (the **Rules**) states that a registered mutual fund dealer shall be a member of the Mutual Fund Dealers Association of Canada (an **MFDA Member**) and shall trade exclusively in the shares or units of mutual funds.
2. Alberta Securities Commission Policy 3.10 *Sale of Securities under Registration and Prospectus Exemptions by Salespersons of Restricted Dealers* establishes criteria under which the Alberta Securities Commission (the **Commission**) may exempt an MFDA Member from section 16(c) of the Rules to permit certain of its salespersons registered in Alberta (the **Authorized Salespersons**) to trade in securities described in an offering memorandum and offered pursuant to the offering memorandum exemption contained in section 2.9 of National Instrument 45-106 *Prospectus and Registration Exemption* (the **Offering Memorandum Securities**), under the supervision of a compliance officer registered under the Act (the **Compliance Officer**).
3. The Commission considers that limited blanket relief from the prohibition in section 16(c) of the Rules prohibiting an MFDA Member from trading in Offering Memorandum Securities would not be detrimental to investors.

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4. The Commission orders, under section 213 of the *Securities Act* (Alberta), R.S.A. 2000, c. S-4 (the **Act**), that Authorized Salespersons of an MFDA Member are exempt from section 16(c) of the Rules to the extent necessary to permit them to trade in Offering Memorandum Securities, provided that:
 - (a) prior to each trade:
 - (i) the Authorized Salespersons deliver to the investor a copy of the offering memorandum, or any amended offering memorandum;
 - (ii) the Authorized Salespersons ensure that:
 - A. an investment in the Offering Memorandum Securities is a suitable investment for the client;
 - B. the investors understand that the Offering Memorandum Securities are sold in reliance on an exemption from the registration and prospectus requirements of the Act;

- C. the investors understand that there is no established market for the Offering Memorandum Securities;
 - D. the investors understand the dollar amount of compensation that the MFDA Member and the applicable Authorized Salesperson will receive from the sale of the Offering Memorandum Securities and its relative percentage of the investment amount;
 - E. the investors understand that the offering memorandum is not a prospectus and has not been reviewed by the Commission; and
 - F. the investors understand that, by purchasing the Offering Memorandum Securities under a prospectus exemption, they are not afforded the same protections, rights and remedies, including statutory rights of action for rescission or damages, as they would be afforded by the Act had they purchased the securities under a prospectus; and
- (iii) upon receipt of a subscription for the Offering Memorandum Securities from an investor, the Compliance Officer:
- A. reviews the subscription agreement prior to its acceptance and follows up with the applicable Authorized Salesperson to ensure that the implemented procedures have been followed; and
 - B. personally contacts each investor before the subscription is accepted to confirm that the investor has had an opportunity to obtain independent professional advice concerning an investment in the Offering Memorandum Securities, to answer any questions that the investor might have and to otherwise ensure that the investment is a suitable investment for such investor;
- (b) in respect of each such trade the Compliance Officer ensures that the Authorized Salespersons have performed their duties specified in paragraphs 4(a)(i) and (ii) above;
- (c) the Compliance Officer is a resident of Alberta and provides the MFDA Member with written undertaking to perform the duties required of a Compliance Officer pursuant to this Order;
- (d) the MFDA Member provides a copy of this Order to the Compliance Officer and each Authorized Salesperson who trades in the Offering Memorandum Securities; and
- (e) the Authorized Salespersons have passed the Canadian Securities Exam administered by the Canadian Securities Institute.

5. This Order ceases to have effect upon the coming into force of National Instrument 31-103 *Registration Requirements*.

“Original signed by”
Glenda A. Campbell, QC, Vice-Chair
Securities Commission

“Original signed by”
Stephen R. Murison, Vice-Chair Alberta
Alberta Securities Commission