

BEING PART OF THE GROUP - EMDs PERMITTED TO SELL IN PROSPECTUS OFFERINGS

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(Updated as of July 2, 2024)

On June 20, 2024, the Canadian Securities Administrators [announced](#) a coordinated blanket order allowing the temporary exemption from restrictions on exempt market dealers (“**EMDs**”) from participating in selling groups in prospectus offerings. To date, the participating jurisdictions include Alberta, British Columbia, Nova Scotia, Ontario, Québec and Saskatchewan, with New Brunswick intending to issue a similar order in the coming weeks.

These blanket orders temporarily lift the restrictions set out in subsection 7.1(2)(d) of [National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations](#) (“**NI 31-103**”) which will allow, subject to certain conditions, EMDs to participate in prospectus offerings as members of selling groups.[1]

On December 4, 2017, [amendments](#) to NI 31-103 came into force which included restrictions on EMDs, including a prohibition on their participation in prospectus offerings. Prior to this amendment, EMDs were allowed to act as members in selling groups in prospectus offerings.

The Capital Markets Modernization Taskforce (the “**Taskforce**”) published its [Final Report](#) in January of 2021 (the “**Final Report**”), which included 74 recommendations to improve capital markets in Ontario. Taking into account the important role that EMDs play for early-stage companies and financings, one recommendation of the Taskforce was to allow EMD participation in selling groups in prospectus offerings, encouraging continuous and ongoing support of issuers as they grow. The view of the Taskforce was that this would enhance capital-raising, particularly for smaller issuers, and provide greater access to investment opportunities for investors.

In implementing this recommendation of the Taskforce, the [blanket orders](#) issued by participating jurisdictions include some conditions for allowing EMDs to participate in prospectus offerings as selling group members:

- investment dealer will still act as the underwriter in such distributions and sign the certificate; and
- compensation paid, including all commissions and fees, to the EMD do not exceed 50% of the compensation paid to the investment dealer acting as underwriter.

Though the blanket orders were inspired by the Taskforce's recommendation, including certain of its conditions, the blanket orders also provide that compensation for EMDs "not exceed 50% of the lowest total compensation paid or payable to any selling group member that is an investment dealer".

As well, the blanket orders require that EMDs only act as a dealer:

- in accordance with the terms of the selling group agreement with the issuer or investment dealer; and
- to a person or company who, had they pursued a distribution of securities under an exemption from the prospectus requirement, would have qualified.

The blanket orders do not specify the timing necessary for EMDs to enter selling groups, merely that they must abide by the terms set out in the selling group agreement with the issuer or investment dealer.

Expanding the scope of EMDs to allow them to participate as dealers in prospectus offers will reduce barriers for EMDs to act as agents in Capital Pool Company[®] Program offerings available on the TSX Venture Exchange.

If you have any questions regarding the impact of these blanket orders on your business, please contact McMillan's Capital Markets Group.

[1] EMDs intending to rely on these blanket orders will need to comply with the applicable reporting requirements under National Instrument 33-109 *Registration Information Requirements* to report a change in business activity.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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