

Annex A
Amendments to
National Instrument 33-105 Underwriting Conflicts

1. *National Instrument 33-105 Underwriting Conflicts is amended by this Instrument.*
2. *The following Part is added:*

PART 3A – NON-DISCRETIONARY EXEMPTIONS - ELIGIBLE FOREIGN SECURITIES

3A.1 Definitions - In this Part,

“eligible foreign security” means a security offered primarily in a foreign jurisdiction as part of a distribution of securities in either of the following circumstances:

- (a) the security is issued by an issuer
 - (i) that is incorporated, formed or created under the laws of a foreign jurisdiction,
 - (ii) that is not a reporting issuer in a jurisdiction of Canada,
 - (iii) that has its head office outside of Canada, and
 - (iv) that has a majority of the executive officers and a majority of the directors ordinarily resident outside of Canada;
- (b) the security is issued or guaranteed by the government of a foreign jurisdiction;

“executive officer” means, for an issuer, an individual who

- (a) is a chair, vice-chair or president,
- (b) is a chief executive officer or chief financial officer,
- (c) is a vice-president in charge of a principal business unit, division or function including sales, finance or production, or
- (d) performs a policy-making function in respect of the issuer;

“exempt offering document” means:

- (a) in New Brunswick, Nova Scotia, Ontario and Saskatchewan, an offering memorandum as defined under the securities legislation of that jurisdiction, and

(b) in all other jurisdictions, a document including any amendments to the document, that

(i) describes the business and affairs of an issuer, and

(ii) has been prepared primarily for delivery to and review by a prospective purchaser to assist the prospective purchaser in making an investment decision in respect of securities being distributed pursuant to an exemption from the prospectus requirement;

“FINRA” means the self regulatory organization in the United States of America known as the Financial Industry Regulatory Authority;

“permitted client” has the same meaning as in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

3A.2 Application - This Part does not apply to a distribution if a prospectus has been filed with a Canadian securities regulatory authority for the distribution.

3A.3 Exemption based on U.S. disclosure - Subsection 2.1(1) does not apply to a distribution of a security described in paragraph (a) of the definition of eligible foreign security if all of the following apply:

- (a) the distribution is made to a permitted client through a registered dealer or international dealer;
- (b) the registered dealer or international dealer delivers a written notice to the permitted client before or during the distribution of the eligible foreign security that specifies the exemption relied on and a reference to this section;
- (c) an exempt offering document prepared with respect to the distribution is delivered to the permitted client;
- (d) a concurrent distribution of the security is made by the issuer to investors in the U.S.;
- (e) the exempt offering document contains the same disclosure as that provided to investors in the U.S.;
- (f) if applicable, the disclosure provided in the exempt offering document for a distribution referred to in paragraph (d) is made in compliance with FINRA rule 5121, as amended from time to time;
- (g) the distribution referred to in paragraph (d) is made in compliance with applicable U.S. federal securities law.

3A.4 Exemption for foreign government securities - Subsection 2.1(1) does not apply to a distribution of a security described in paragraph (b) of the definition of eligible foreign security if:

- (a) the distribution is made to a permitted client through a registered dealer or international dealer, and
- (b) the registered dealer or international dealer delivers a written notice to the permitted client, before or during the distribution of the eligible foreign security that specifies the exemption relied on and a reference to this section.

3A.5 Manner of notice – For greater certainty, a notice required under paragraphs 3A.3(b) and 3A.4(b) may be incorporated into the exempt offering document delivered to the permitted client.

3A.6 Alternative compliance with notice requirement - A notice will be considered to have been delivered to a permitted client in compliance with paragraph 3A.3(b) or 3A.4(b), if

- (a) the registered dealer or international dealer has previously delivered a notice to the permitted client in compliance with paragraph 3A.3(b) or 3A.4(b), and
- (b) the notice stated that the registered dealer or international dealer intends to rely on the exemption in paragraph 3A.3(b) or 3A.4(b), as applicable, for any distribution in the future of an eligible foreign security to the permitted client..

3. This Instrument comes into force on September 8, 2015.