

Citation: 2023 BCSECCOM 560

Headnote

Pursuant to National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* -- Relief from the prohibition on the use of corporate officer titles by certain registered individuals in respect of institutional clients - Relief does not extend to interactions by registered individuals with retail clients.

Applicable Legislative Provisions

Multilateral Instrument 11-102 *Passport System*, subsection 4.7(1)

National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, paragraph 13.18(2)(b), section 15.1

November 22, 2023

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

and

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

and

**In the Matter of
Haywood Securities Inc.
(the Filer)**

Decision

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (**Legislation**) that pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), the Filer and its Registered Individuals (as defined below) are exempt from the prohibition in paragraph 13.18(2)(b) of NI 31-103 that a registered individual may not use a corporate officer title when interacting with clients, unless the individual has been appointed to that corporate office by their sponsoring firm pursuant to applicable corporate law, in respect of Institutional Clients (as defined below) (**Exemption Sought**).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon by the Filer and its Registered Individuals (as defined below) in each of the other provinces and territories of Canada; and

- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

- ¶ 2 Terms defined in MI 11-102 and National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. The Filer is a corporation formed under the laws of British Columbia and has its head office in Vancouver, British Columbia.
 2. The Filer is registered as an investment dealer in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and Yukon. The Filer is also a member of the Canadian Investment Regulatory Organization (**CIRO**).
 3. The Filer is not in default of securities legislation in any province or territory of Canada, other than with respect to the subject matter of this decision. The Filer and certain of its registered individuals were in default of the requirements in paragraph 13.18(2)(b) of NI 31-103 from December 31, 2021 to the date of the decision. The Exemption Sought is only in effect from the date of the decision.
 4. The Filer's principal business is acting as an investment dealer providing investment products and services to individual, corporate and institutional clients.
 5. The Filer is the sponsoring firm for registered individuals that interact with clients and use a corporate officer title without being appointed to the corporate office of the Filer pursuant to applicable corporate law (**Registered Individuals**). The number of Registered Individuals may increase or decrease from time to time as the business of the Filer changes. As of the date of this decision, the Filer has approximately five Registered Individuals.
 6. The current titles used by the Registered Individuals include the words "Vice President", "Director" and "Managing Director", and the Registered Individuals may use additional corporate officer titles in the future (collectively, **Titles**).
 7. The Filer has a process in place for awarding the Titles, which sets out the criteria for each of the Titles. The Titles are based on criteria including seniority and experience. A Registered Individual's sales activity or revenue generation is not a primary factor in the decision by the Filer to award one of the Titles.
 8. The Registered Individuals interact primarily with institutional clients that are, each, a non-individual "institutional client" as defined in CIRO Rule 1201 (**Institutional Clients**).
 9. To the extent a Registered Individual interacts with clients that are not Institutional Clients (**Retail Clients**), the Filer has policies, procedures and controls in place to ensure that such Registered Individual will only use a Title when interacting with Institutional Clients, and will not use a Title in any interaction with Retail Clients, including in any communications, such as written and verbal communications, that are directed at, or may be received by, Retail Clients.

10. The Filer will not grant any registered individual that interacts primarily with Retail Clients, nor will such registered individual be permitted by the Filer to use, a corporate officer title other than in compliance with paragraph 13.18(2)(b) of NI 31-103.
11. Section 13.18 of NI 31-103 prohibits registered individuals in their client-facing relationships from, among other things, using titles or designations that could reasonably be expected to deceive or mislead existing and prospective clients. Paragraph 13.18(2)(b) of NI 31-103 specifically prohibits the use of corporate officer titles by registered individuals who interact with clients unless the individuals have been appointed to those corporate offices by their sponsoring firms pursuant to applicable corporate law.
12. There would be significant operational and human resources challenges for the Filer to comply with the prohibition in paragraph 13.18(2)(b). In addition, the Titles are widely used and recognized throughout the institutional segment of the financial services industry within Canada and globally, and being unable to use the Titles has the potential to put the Filer and its Registered Individuals at a competitive disadvantage as compared to non-Canadian firms that are not subject to the prohibition and who compete for the same institutional clients.
13. Given their nature and sophistication, the use of the Titles by the Registered Individuals would not be expected to deceive or mislead existing and prospective Institutional Clients.
14. For the reasons provided above, it would not be prejudicial to the public interest to grant the Exemption Sought.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that, when using the Titles, the Filer and its Registered Individuals interact only with existing and prospective clients that are exclusively non-individual “permitted clients” as defined in NI 31-103 or non-individual “institutional clients” as defined in CIRO Rule 1201.

This decision will terminate six months, or such other transition period as may be provided by law, after the coming into force of any amendment to NI 31-103 or other applicable securities law that affects the ability of the Registered Individuals to use the Titles in the circumstances described in this decision.

“Mark Wang”

Mark Wang
Director, Capital Markets Regulation
British Columbia Securities Commission