

Citation: 2023 BCSECCOM 332

Headnote MI 11-102 *Passport System* – Filer to designate two individuals as chief compliance officer (CCO), with each CCO responsible for one or more distinct lines of business carried on by the Filer – A registered firm is required to designate an individual to be the CCO – Filer is the type of firm that is contemplated in section 5.2 of NI 31-103CP due to its scale and the fact that it has distinct operating divisions, each of the Filer's CCOs will fulfill required CCO functions in respect of the division for which the individual is designated CCO – *National Instrument 31-103 Registrant Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103), Part 15.1, ss. 11.3(1)*, requirement to designate an individual to be chief compliance officer.

Applicable Legislative Provisions

*National Instrument 31-103 Registrant Requirements, Exemptions and Ongoing Registrant Obligations, Part 15.1, ss. 11.3(1)*

July 6, 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 Canaccord Genuity Corp. (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 (the **Legislation**) exempting the Filer from the requirement in section 11.3(1) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)* to permit the Filer to designate two individuals as chief compliance officer (**CCO**), with the result that each CCO will be responsible for one or more distinct lines of business carried on by the Filer (the **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 in all of the provinces and territories of Canada other than British Columbia and Ontario; 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, National Instrument 14-101 *Definitions* and NI 31-103 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:

#### ***The Filer***

1. The Filer is a corporation organized under the laws of Ontario.
2. The Filer's head office is located in Vancouver, British Columbia.
3. The Filer is an investment dealer member of the Canadian Investment Regulatory Organization and is registered as an investment dealer in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon; an investment dealer and futures commission merchant in Manitoba and Ontario; and an investment dealer and derivatives dealer in Québec.
4. The Filer is not in default of securities legislation in any jurisdiction of Canada.

#### ***The lines of business***

5. The Filer currently has three distinct operating lines of business that engage in registrable activities and require a CCO (each, a **Division**):
  - (a) The Wealth Management Division currently provides full service wealth management and retail brokerage services to retail clients through approximately 500 employees including 140 investment

advisory teams, and has ten branch offices across Canada. The Wealth Management Division provides to its retail clients securities trading (both new issue and secondary trading), suitability-based investment advice, portfolio management, and custody services in a wide variety of equity, fixed income, options and other securities. The Filer holds customer securities in cash and margin accounts and extends margin to its retail clients.

- (b) The Capital Markets Division currently provides sales and trading services to institutional clients, including providing direct electronic access to Canadian Markets, investment banking services, including conducting prospectus and exempt offerings of equity and fixed income securities, publication of equity research, mergers and acquisitions advisory services, and securities lending services. The Filer's Capital Markets Division (including CG Direct) is currently comprised of approximately 280 employees, located in four offices across Canada.
  - (c) The CG Direct Division conducts order execution only services, primarily for employees of the Filer, as well as for a small number of proprietary trading entities through direct electronic access.
6. The Divisions share certain services, primarily relating to securities custody and settlement, back-office operations and account management. Other shared services include marketing, HR, building facilities, IT and other similar business services unrelated to supervision or compliance.

### ***The CCOs***

7. The Filer desires to designate one individual as CCO of the Wealth Management Division and a different individual as CCO of both the Capital Markets Division and the CG Direct Division. Each of the CCOs will meet the proficiency requirements to act in the role. The Filer will appoint one of the CCOs to be responsible for any future operating lines of business that engage in registrable activities.
8. Each Division has a well-established and distinct supervisory and compliance structure, with individual compliance personnel clearly assigned to each Division. A prior CCO of the Filer, following his appointment on April 1, 2021, immediately appointed an individual as Head of Wealth Compliance and another individual as Head of Capital Markets Compliance. This structure has been in place since April 1, 2021, and the Filer continues to develop this structure by adding compliance personnel in each area. The Head of Wealth Compliance is currently serving as the Filer's sole CCO. If the Exemption Sought is granted, it is the Head of Wealth Compliance and the Head of Capital Markets

Compliance who were appointed on April 1, 2021, who are intended to be the initial appointment as the two CCOs.

***The CCO Requirement***

9. Under section 11.3 of NI 31-103, a registered firm is required to designate an individual to be the CCO (the **CCO Requirement**).

***Reasons for exemption sought***

10. As noted in paragraph 5, there are material differences in the functions and operations of each of the Filer's Divisions as well as in the regulation of registrable activities for each of the Divisions. Given the size, diversity and increasing complexity of each of the Filer's Divisions, it is difficult (i) for one individual to effectively carry out all the responsibilities of the CCO for both the Wealth Management Division and the Capital Markets Division (including the CG Direct Division), and (ii) for one CCO to effectively identify and stay abreast of the different issues and risks applicable to clients and the capital markets stemming from both of these Divisions.
11. Given the large scope, complexity and diversified business operations of each Division, the Filer believes that having a separate CCO for the Wealth Management Division and for both the Capital Markets Division and the CG Direct Division will allow it to more effectively manage its compliance program by enabling it to focus resources on the specific requirements of each Division. Each of the Wealth Management Division and the Capital Markets Division and CG Direct Division requires different subject matter expertise and different experience to be effective in the CCO role.
12. If the Exemption Sought is granted,
  - (a) the CCO of the Wealth Management Division will oversee compliance systems that are reasonably designed to ensure that each investment advisor and each portfolio manager and their respective teams, and each person acting on their behalf, comply with securities legislation. The CCO of the Wealth Management Division will focus on the applicable laws, regulations, rules, policies and codes of conduct which govern the wealth management activities of the Filer in the jurisdictions in which it operates. To this end, the CCO of the Wealth Management Division will maintain a compliance process and infrastructure throughout the wealth management business to enable the Filer's management to fulfill their supervisory responsibilities. This includes maintaining appropriate policies and procedures and overseeing a supervisory structure that monitors the retail sales

and trading practices (including suitability, know your client and know your product), retail communications, the registration department, customer complaints and investigations, and the training of branch managers; and

- (b) the CCO of the Capital Markets Division and CG Direct Division will oversee compliance systems that are reasonably designed to ensure that the activities carried out by the Capital Markets Division and the CG Direct Division, and each person acting on their behalf, comply with securities legislation. The CCO of the Capital Markets Division and CG Direct Division will maintain appropriate policies and procedures for trading surveillance (including compliance with the Uniform Market Integrity Rules (**UMIR**)), securities offering procedures, conflicts of interest, control room activities such as maintenance of Grey and Restricted Lists, employee trading, institutional account opening, and will oversee a supervisory structure that monitors compliance with applicable securities legislation. This will include overseeing compliance with the requirements governing: (i) public and private offerings of corporate issuers; (ii) institutional sales practices and sales communications; (iii) maintenance of applicable research report disclosures, and review of research reports for UMIR compliance and potential material non-public information; (iv) conflict identification and management. The Capital Markets Division functions within the overall global operations of the corporate group of which the Filer is one subsidiary (the **Filer Corporate Group**), which have extensive Capital Markets presences in the United States, the United Kingdom and Europe and Australia. Having a separate CCO will enable this Division to more effectively address cross border issues as they arise in the larger global business. Like the CCO for the Wealth Management Division, the Filer believes the CCO of the Capital Markets Division and CG Direct Division will better be able to maintain a compliance process and infrastructure throughout the capital markets and CG Direct business to enable the Filer's management to fulfill their supervisory responsibilities.
13. Within the Filer Corporate Group, the two CCOs will report day-to-day to the Group Chief Legal Officer (the Filer Corporate Group executive responsible for the compliance function at the global level) who, in turn reports day-to-day to the Group Chief Executive Officer (who is also the Chief Executive Officer and Ultimate Designated Person (**UDP**) of the Filer). The UDP of the Filer currently conducts monthly meetings with the Group Chief Legal Officer and the current CCO to review all outstanding compliance matters, key initiatives and regulatory developments. If the

Exemption Sought is granted, such meetings will continue and will include both CCOs, and each CCO will have direct access to the Filer's UDP at such times as each CCO may consider necessary or advisable in view of their responsibilities; each CCO will have direct access to the board of directors at such times as each CCO may consider necessary or advisable in view of their responsibilities; each CCO will provide reports to the board of directors of the Filer at each of their regularly scheduled quarterly meetings; each CCO will provide an annual report to the board of directors of the Filer as required by subsection 5.2(d) of NI 31-103; and each CCO will comply in all other respects with applicable securities requirements, including the requirements set out in NI 31-103. In addition, the two CCOs will have regular meetings with each other and with the Group Chief Legal Officer to discuss the overall governance of the Filer, key initiatives and regulatory matters that may impact each line of business and to leverage the knowledge and experience of their equivalent officers in the other jurisdictions in which the Filer Corporate Group operates.

14. With the granting of the Exemption Sought, the Filer would continue its operations with enhanced compliance effectiveness, since one individual would no longer continue to divide their time between the compliance oversight of the Wealth Management Division and the Capital Markets Division (including the CG Direct Division). Under the Filer's proposed structure, the CCOs would have the capacity to respond more effectively to compliance issues, provide a higher level of senior participation on the Filer's compliance initiatives, and undertake more detailed reviews of the Filer's compliance monitoring programs to assist in reducing the risks of non-compliance.
15. In section 5.2 of Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, the Canadian Securities Administrators (**CSA**) state that:

Firms must designate one CCO. However, in large firms, the scale and kind of activities carried out by different operating divisions may warrant the designation of more than one CCO. We will consider applications, on a case-by-case basis, for different individuals to act as the CCO of a firm's operating divisions.
16. In accordance with the CSA Staff Notice 31-358 *Guidance on Registration Requirements for Chief Compliance Officers and Request for Comments*, the CSA may allow registered firms to implement their CCO responsibilities in a manner that better aligns with their operational needs and business models, and acknowledge that larger firms may benefit from

implementing a multiple CCO model where they have distinct business lines or registration categories.

17. Allowing the Filer to designate and have registered a CCO for each of the Wealth Management Division and the Capital Markets Division (including the CG Direct Division) is consistent with the policy objectives the CCO Requirement is intended to achieve as the Filer has grown rapidly over the past five years in both scale and complexity, and the Filer believes dual CCOs for its Divisions will enable it to most effectively address its compliance and supervisory needs.

#### **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:

- (a) each CCO fulfils the functions described in section 5.2 of NI 31-103 [*Responsibilities of the Chief Compliance Officer*], or any successor provision thereto, in respect of the Division(s) for which the individual is the designated CCO; and
- (b) each CCO has direct access to the UDP and direct access to the board of directors of the Filer.

Mark Wang  
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British Columbia Securities Commission