

ASC POLICY 3.10

SALE OF SECURITIES UNDER REGISTRATION AND PROSPECTUS EXEMPTIONS BY SALESPERSONS OF RESTRICTED DEALERS

1. APPLICATION OF THIS POLICY

This policy has been published to assist Restricted Dealers and their Salespersons contemplating the sale of securities under statutory exemptions. It sets out guidelines for an application to the Board of the Alberta Securities Commission (the “Board”) by a Restricted Dealer to permit its salespeople to sell such securities.

2. DEFINITIONS

In this Policy, the following definitions apply:

- 2.1 “Outside Deal” means a securities transaction that a registered salesperson makes without the involvement and permission of the Sponsoring Dealer and includes the sale of securities sold under a registration and prospectus exemption;
- 2.2 “Restricted Dealer” means a mutual fund dealer or a scholarship plan dealer;
- 2.3 “Salesperson” means a registered salesperson, officer, or partner of a registered dealer;
- 2.4 “Sponsoring Dealer” means the dealer that sponsors the registration of a Salesperson.

3. BACKGROUND

Subsection 16(c) of the regulation made under the *Securities Act* (the “Regulation”) states that a mutual fund dealer is registered to trade exclusively in securities of mutual funds. Subsection 16(d) of the Regulation states that a scholarship plan dealer is registered to trade exclusively in securities of a scholarship or educational plan or trust. Subsection 16(f) of the Regulation states that a security issuer is registered to trade in securities of its own issue exclusively for its own account. The Alberta Securities Commission (the “Commission”) receives enquiries from time to time about whether Salespersons registered with a Restricted Dealer may sell securities under a registration or prospectus exemption contained in subsections 65(1) and 107(1) of the *Securities Act* (Alberta) (the “Act”), respectively.

As a result of several enforcement proceedings, the Commission has a growing concern that clients of Restricted Dealers have not understood the difference between mutual funds and scholarship plans, and securities sold using exemptions from the registration and prospectus requirements of the Act. In particular, the problems identified have included:

- the client does not understand the securities;
- the client believes the securities are liquid or redeemable on demand;
- the client does not know the Salesperson receives compensation for selling the security, or how much compensation the Salesperson receives.

4. GUIDELINES

4.1 Sale of securities under the Seed Capital Exemptions

Most inquiries that the Commission receives concern the sale of securities using the prospectus exemptions under subsections 107(1)(d), 107(1)(p), and 107(1)(q) of the Act, and the registration exemptions under subsections 65(1)(e), 65(1)(v), and 65(1)(v.1) of the Act. Subsections 107(1)(p), 107(1)(q), 65(1)(v) and 65(1)(v.1) of the Act (the “Seed-Capital Exemptions”) allow only a registered dealer to receive compensation for selling securities under these exemptions. The Commission considers the reference to “registered dealer” in these exemptions to mean an investment dealer, broker, or securities dealer. It does not mean a mutual fund dealer, scholarship plan dealer, or security issuer. Accordingly, a Salesperson of a Restricted Dealer may not receive commissions or other compensation for sales under the Seed-Capital Exemptions.

4.2 Written Permission for Sale of Exempt Securities

Subsections 41(2)(g) and 41(2)(h) of the Regulation require the Salesperson to get the written consent of both the Chief of Securities Administration (the “Chief”) and the Sponsoring Dealer to engage in any other business or outside employment. This requirement ensures that the Sponsoring Dealer exercises its supervisory function over all the Salesperson’s business activities. The Commission considers the sale of securities under statutory exemptions by a Salesperson of a Restricted Dealer to be business or employment other than that for which the Salesperson is registered. The Commission reminds Sponsoring Dealers and their Salespersons of their obligation to get this written consent to engage in other business or outside employment. Enforcement proceedings have been, and will be, initiated in circumstances in which a Salesperson did not get the consent of the Sponsoring Dealer and the Chief.

4.3 Application to the Board

In addition, a Restricted Dealer must apply to the Board for permission to allow its Salespersons to sell securities under the registration and prospectus exemptions in sections 65 and 107 of the Act, respectively (“Exempt Securities”). The application must state how the dealer proposes to address the Commission’s concerns set out in

this Policy. The dealer must file a separate application for each offering of Exempt Securities that it proposes to allow its Salespersons to sell.

The application must follow the guidelines set out in ASC Policy 2.1. In most cases, the relief sought will be a section 185 order exempting the Salespersons from section 16 of the Regulation.

4.4 Additional Guidelines

The following guidelines are for the benefit of Restricted Dealers and their Salespersons contemplating the sale of securities under statutory exemptions:

- 4.4.1 Outside Deals are unethical and may not be undertaken by a registered Salesperson.
- 4.4.2 Every Restricted Dealer must approve all products sold by its Salespersons.
- 4.4.3 The Restricted Dealer and the Salesperson must follow the “suitability of investment” rule for trades in Exempt Securities. The Restricted Dealer must have procedures in place to monitor whether recommendations and trades in Exempt Securities are suitable for the particular client.
- 4.4.4 The Restricted Dealer and the Salesperson involved in a trade in Exempt Securities must ensure that, at a minimum, the client:
 - 4.4.4.1 understands the Exempt Security;
 - 4.4.4.2 knows whether the Exempt Security is liquid and whether there is an established market for the security;
 - 4.4.4.3 knows the dollar amount of compensation that the Salesperson receives for the sale, and its percentage of the investment;
 - 4.4.4.4 knows that the offering memorandum, if one is used, is not a prospectus and has not been reviewed by the Alberta Securities Commission;
 - 4.4.4.5 knows that the purchaser of Exempt Securities does not have certain protections, rights and remedies provided by the Act, including statutory rights of rescission and damages.

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