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Submitted via [CSA Consultation Page](#)

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission of New Brunswick
Nova Scotia Securities Commission
Ontario Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan

Dear Sirs/Mesdames:

RE: CSA MULTILATERAL STAFF NOTICE 31-367

The Canadian Forum for Financial Markets (the “**CFFiM**”) is a values-driven, purposeful, and reform-minded organization, which is dedicated to advancing initiatives that improve the health and competitiveness of Canada’s financial markets for the greater good.

The CFFiM works to provide constructive analyses and recommendations to stimulate capital raising, regulatory modernization, and inclusive financial growth in Canada. In furtherance of those goals, we write in response to CSA Multilateral Staff Notice 31-367, *Expiry of Blanket Order 31-930, Exemption to Allow Exempt Market Participation in Selling Groups in Offering of a Security under a Prospectus* (the CSA “**Notice**”). We offer the below constructive analysis, as a solutions partner, to stimulate capital raising, regulatory modernization and inclusive growth for the national economic competitiveness needed to meet the next decade’s challenges.

EXECUTIVE SUMMARY

The Participating Jurisdictions’ decision to not extend Coordinated Blanket Order 31-930 *Exemption to Allow Exempt Market Dealer Participation in Selling Groups in Offerings of Securities Under a Prospectus* (the “**Blanket Order**”) is understood and appreciated.

The Notice highlights larger concerns with respect to the restrictions that are placed on exempt market dealers (“**EMDs**”), which merit reconsideration.

I. THE EXEMPT MARKET DEALER REGISTRATION CATEGORY

The EMD registration category was introduced in 2009 through National Instruments 31-103, *Registration Requirements, Exemptions, and Ongoing Registrant Obligations* (“**NI 31-103**”), which was intended to create a streamlined and harmonized registration system.¹ Within this system, the EMD category was initially designed to permit firms to act as dealers for the “exempt market”, which consists of qualified investors such as friends and family of issuers, institutional investors, and high net-worth or “accredited” investors.² However, in the years that followed, NI 31-103 was amended to restrict the scope of permissible EMD activities by prohibiting EMDs from engaging in “brokerage activities”³ and distributing prospectus qualified securities through sales groups.⁴

The scope of activities that can now be carried out by a firm registered in the EMD category are summarized in Companion Policy 31-103, *Registration Requirements, Exemptions, and Ongoing Registrant Obligations* (“**CP 31-103**”) as follows:

“In short, an exempt market dealer may act as a dealer or underwriter in a distribution by an issuer, including a reporting issuer, if the distribution is being made under an exemption from the prospectus requirement. An exempt market dealer may not act as a dealer or underwriter in a distribution that is being made under a prospectus (a prospectus distribution). The investment dealer category or, in the case of a mutual fund prospectus distribution, the mutual fund dealer category, are the appropriate dealer registration categories for prospectus distributions.”⁵

The ability of an EMD to advise clients on securities that have been purchased under an exemption are similarly limited. For example, an EMD may participate in the resale of a security purchased through a prospectus exemption if the resale is also completed in reliance on a prospectus exemption. However, EMDs cannot participate in the resale of freely traded shares. As noted in CP 31-103: “Secondary trading in listed securities should be conducted through an investment dealer in accordance with the rules and requirements applicable to investment dealers.”⁶

In contrast to EMDs, which are directly overseen by provincial securities regulators, registered investment and mutual fund dealers are regulated by the Canadian Investment Regulatory Organization (“**CIRO**”). Unlike EMDs, investment dealers and mutual fund dealers are permitted to advise and sell in a wide range of securities, including both prospectus qualified securities and exempt market products. The Notice identifies additional operational limitations experienced by EMDs.⁷

¹ National Instrument 31-103, [Registration Requirements, Exemptions, and Ongoing Registrant Obligations](#) [“**NI 31-103**”] at s. 7.1 (2)(d).

² Notice of National Instrument 31-103, *Registration Requirements and Exemptions and Consequential Amendments to related Instruments* [\(2009\) 32 OSCB \(Supp-2\)](#) [“**NI 31-103, 2009 Notice**”].

³ For the purpose of this amendment, “brokerage activities” was defined as “trading securities on an exchange in foreign or Canadian markets.” Final Amendments to NI 31-103, NI 31-109, NI 52-107, OSC Rule 33-506, and OSC Rule 35-502, and Related Forms, [\(2014\) 37 OSCB \(Supp-5\)](#) [“**NI 31-103, 2015 Amendments**”].

⁴ Amendments to National Instrument 31-103, *Registration Requirements, Exemptions, and Ongoing Registrant Obligations and Related Instruments*, [\(2017\) 40 OSCB \(Supp-1\)](#) [“**NI 31-103, 2017 Amendments**”].

⁵ Companion Policy 31-103, [Registration Requirements, Exemptions, and Ongoing Registrant Obligations](#), Part 7.

⁶ *Ibid.*

⁷ The Notice states that EMDs are unable to enter carrying broker arrangements with investment dealers. Similar servicing arrangements for ‘introducing firms’ are available outside of CIRO membership. For example: CSA Staff

II. THE BLANKET ORDER

The Blanket Order was intended to enhance capital raising opportunities for issuers by loosening the above noted restrictions to permit EMDs to act as selling group members in prospectus offerings.⁸ This was a worthy initiative, however, as reported in the Notice, only two EMDs made use of the Blanket Order between June 2024 and October 2025. This lack of take-up is unsurprising, given the limited scope of the Exemption Order and disincentives that it created for EMDs.

Perhaps most significantly, the Blanket Order stipulated that the compensation paid to an EMD in connection with the distribution of prospectus qualified securities through a selling group could not exceed 50% of the lowest total amount of compensation paid to any group member that was an investment dealer. This limitation was not grounded in investor protection concerns but created an arbitrary restriction on compensation rather than permitting selling groups to set their own fees on commercially agreeable terms. In this context, it is understandable that EMDs would prefer to enter into referral agreements with investment dealers as opposed to relying on the Blanket Order.

In addition, the Blanket Order was narrow in scope and did not address the more general restrictions placed on EMDs under NI 31-103 as discussed above. In particular, the Blanket Order did not address the inability of EMDs to advise clients on the resale of securities purchased in reliance on the Blanket Order. This further limited the utility of the Blanket Order for EMDs.

Given these limitations, the Participating Jurisdictions were justified in their decision to let the Blanket Order expire without renewal. However, as discussed below, the Blanket Order and the underlying restrictions placed on the EMD category give rise to larger policy issues.

III. BROADER POLICY CONCERNS

When introduced, NI 31-103 was intended to strike the “appropriate balance” between providing an efficient system for registrants while protecting investors.⁹ At that time, the CSA contemplated that its registration regime would need to be flexible to accommodate a wide variety of business models, scales of operations, clients, and products.¹⁰

Despite this, the restrictions on EMDs and a siloed approach to registration funnels all firms that are engaged in prospectus distributions into the investment dealer and mutual fund dealer categories.¹¹ In this sense, the restrictions placed on EMDs are, at least in part, a product of the decisions made by provincial regulators and CIRO when determining which regulator would be responsible for overseeing firms registered in each category in NI 31-103. This approach should be reassessed to meet investor expectations, foster capital formation, and promote competition.

Investor Expectations

The restrictions placed on EMDs are not substantiated by investor protection concerns. Pursuant to NI 31-103, EMDs are subject to ongoing "Know-Your-Client", "Know-Your-Product", and trade suitability

Notice 31-347, *Service Arrangements Between Portfolio Managers and Dealer Members*. The resulting servicing arrangement may address CDS Participant Rules, also cited as a concern, depending on the circumstances.

⁸ Capital Markets Modernization Taskforce, Final Report (January 2021) at pp. 44-45.

⁹ NI 31-103, 2009 Notice, *supra* at p. 2.

¹⁰ *Ibid.*

¹¹ NI 31-103, 2017 Amendments, *supra* at Annex B, p. 24.

obligations.¹² In light of these obligations, there is no reasonable basis to permit EMDs to distribute prospectus exempt securities (i.e. securities with limited or no disclosure) to qualified investors but to be strictly prohibit EMDs from distributing prospectus qualified securities (i.e. securities with prospectus level disclosure) to the same investors. In 2008, the CSA reached the same conclusion in response to comments made on proposed NI 31-103:

“We received comments that EMDs should not be permitted to sell prospectus qualified mutual funds without mutual fund dealer registration. The EMD category contemplates sales of a wide range of securities to qualified purchasers and we can see no investor protection reason why this should not include sales of prospectus qualified mutual funds.”¹³ [emphasis added]

Rather than protecting investors, the limitations placed on EMDs with respect to engaging in prospectus qualified distributions are inconsistent with the needs of Canadian investors. These restrictions limit the range of products and services that are available to accredited and other qualified investors who invest through EMDs.

Capital Formation

As recognized in the Notice, EMDs play an important role in assisting early-stage and small-to-medium sized issuers in raising capital by distributing securities under exemptions from the prospectus requirement. When those issuers grow and need to raise capital through a prospectus qualified distribution, EMDs are limited in their ability to continue to assist the issuer. There may be circumstances in which the strict prohibitions that are placed on EMDs may inhibit or limit an issuer’s ability to access capital without providing any countervailing policy benefits.

Competition

The effect of the restrictions placed on the EMD category has been to limit the business models that are available to firms in the absence of becoming registered, or having subsidiaries registered, in multiple categories and obtaining CRO membership. This requires firms and their corporate subsidiaries to incur additional compliance and other business costs, which is not a viable option for firms of smaller scale. This, in turn, has an impact on the number and diversity of firms that operate in Canada.

When adopting amendments to prohibit EMDs from engaging in prospectus offerings, the CSA noted: “We do not believe, as a matter of policy, that it makes sense to allow the exempt market dealer category to develop further into a competing platform for issuers that wish to make prospectus offerings.”¹⁴ Policy decisions cannot be designed to suppress competition. They must focus on promoting competition and fostering capital formation for the benefit of investors and registrants.

IV. DEALER REGISTRATION IN OTHER JURISDICTIONS

The systems used by the United States’ Securities and Exchange Commission (“SEC”) and the United Kingdom’s Financial Conduct Authority (“FCA”) could serve as a valuable point of reference in a review of the restrictions placed on EMDs.

¹² NI 31-103, *supra* at Part 13.

¹³ NI 31-103, 2009 Notice, *supra* at p. 19.

¹⁴ NI 31-103, 2015 Amendments, *supra* at p. 12.

The SEC's registration system includes general dealer and broker registration categories without an EMD sub-category.¹⁵ It requires firms to register as a broker or dealer but permits registered firms with more narrow business practices to apply for exemptive relief from the SEC. For example, if a registered dealer only offers exempt market products to qualified investors, that dealer can apply for an exemption to the more general regulatory obligations that would apply to the firm if it were dealing in prospectus qualified and freely traded securities.¹⁶ This system appears to offer optionality for registrants, which is not provided in Canada.

The FCA's registration system requires firms to apply for permissions based on the characteristics of the firm's proposed business model, including the type of conduct that firm intends to carry out and the type of investors that the firm intends to service.¹⁷ If, for example, a firm intends to advise retail clients on securities, the firm will need to apply for permissions to conduct that specific business activity, which will determine the firm's prudential and other regulatory obligations.¹⁸ This also appears to offer a level of flexibility that is not found in Canada by allowing firms to seek permissions based on their unique business models, as opposed to requiring firms to select from a list of boilerplate registration categories. A similar approach has been adopted by the European Securities and Market Authority.¹⁹

A fulsome analysis of the registration systems that have been adopted in other jurisdictions is outside the scope of this correspondence.

V. RECOMMENDATIONS

The regulatory restrictions placed on the EMD category should be reassessed for greater flexibility, which could benefit EMDs across scales. This recommendation aligns with the OSC's Six-Year Strategic Plan, which identifies fostering conditions for capital formation and innovation in both the public and private markets as a primary objective.²⁰

Respectfully submitted,

Canadian Forum for Financial Markets

¹⁵ Securities and Exchange Commission, [Guide to Broker-Dealer Registration](#) (last viewed on January 22, 2026).

¹⁶ *Ibid.*

¹⁷ See: Financial Conduct Authority, [Authorization](#) (last viewed on January 22, 2026).

¹⁸ *Ibid.*

¹⁹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

²⁰ Ontario Securities Commission, Strategic Plan for 2024-2030.