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**NATIONAL INSTRUMENT 35-101
CONDITIONAL EXEMPTION FROM REGISTRATION FOR
UNITED STATES BROKER-DEALERS AND AGENTS**

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**NATIONAL INSTRUMENT 35-101
CONDITIONAL EXEMPTION FROM REGISTRATION FOR
UNITED STATES BROKER-DEALERS AND AGENTS**

PART 1 DEFINITIONS

1.1 Definitions - In this Instrument,

"agent" means a partner, officer, director or salesperson of a broker-dealer who is acting on behalf of a broker-dealer in effecting trades of securities;

"broker-dealer" means a "broker" or "dealer", as those terms are defined in the 1934 Act, that has its principal place of business in the United States of America;

"foreign security" means a security

- (a) that is listed for trading or quoted on an exchange or market outside of Canada; or
- (b) of an issuer that is not incorporated, continued or organized under the laws of Canada or a jurisdiction of Canada; and

"NASD" means the National Association of Securities Dealers in the United States of America.

PART 2 BROKER-DEALER EXEMPTION

2.1 Exemption from Dealer Registration Requirement - The dealer registration requirement does not apply to a broker-dealer if

- (a) the broker-dealer has no office or other physical presence in any jurisdiction in Canada;
- (b) the broker-dealer is trading in a foreign security;
- (c) the trading is with or for
 - (i) an individual ordinarily resident in the United States of America who is temporarily resident in the local jurisdiction and with whom the broker-dealer had a brokerdealer client relationship before the individual became temporarily resident in the local jurisdiction; or
 - (ii) an individual if the trade is for the individual's tax-advantaged retirement savings plan or with the individual's tax-advantaged retirement savings plan, and
 - (i) the plan is located in the United States of America,
 - (ii) the individual is a holder of or contributor to the plan, and
 - (iii) the individual was previously resident in the United States of America;

- (d) the broker-dealer has not advertised for or solicited new clients in the local jurisdiction;
- (e) the broker-dealer is a member of the NASD;
- (f) the broker-dealer has delivered, or immediately after the broker-dealer first relies on this section delivers, to the securities regulatory authority
 - (i) a notice that the broker-dealer is relying on an exemption from the registration requirement provided under this Instrument;
 - (ii) a statement of the broker-dealer certifying that the broker-dealer is registered in the state of the United States of America where the broker-dealer was located when the broker-dealer first relied on this section; and
 - (iii) an executed Form 35-101 F1 Submission to Jurisdiction and Appointment of Agent for Service of Process;
- (g) the broker-dealer has delivered a notice to the securities regulatory authority describing any criminal or quasi-criminal proceeding brought against the broker-dealer or its agents in any jurisdiction or foreign jurisdiction, or of any decision, order, ruling, or other requirement made with respect to or imposed on the broker-dealer or its agents in a jurisdiction or foreign jurisdiction as a result of any administrative, self-regulatory or regulatory action, hearing or proceeding involving fraud, theft, deceit, misrepresentation or similar conduct;
- (h) the broker-dealer has disclosed to the client that the broker-dealer and its agents are not subject to the full regulatory requirements otherwise applicable under local securities legislation; and
- (i) the broker-dealer, in the course of its dealings with clients, acts fairly, honestly and in good faith.

2.2 Termination Notice - A broker-dealer shall immediately notify the securities regulatory authority if the broker-dealer will no longer engage in trading or advising activities under section 2.1.

2.3 Exemption from Adviser Registration Requirement - The adviser registration requirement does not apply to advising activities of the broker-dealer if those activities are solely incidental to trading activities of the broker-dealer under section 2.1.

PART 3 AGENTS EXEMPTION

3.1 Agents Exemption - The dealer registration requirement does not apply to an agent if

- (a) the trading is on behalf of a broker-dealer that has notified the agent of its intent to rely on the exemption under section 2.1;
- (b) the agent has no office or other physical presence in any jurisdiction in Canada;
- (c) the agent is trading in a foreign security;

- (d) the trading is with or for
 - (i) an individual ordinarily resident in the United States of America who is temporarily resident in the local jurisdiction and with whom the broker-dealer on whose behalf the agent is trading had a broker-dealer client relationship before the individual became temporarily resident in the local jurisdiction; or
 - (ii) an individual if the trade is for the individual's tax-advantaged retirement savings plan or with the individual's tax-advantaged retirement savings plan, and
 - (i) the plan is located in the United States of America,
 - (ii) the individual is a holder of or contributor to the plan, and
 - (iii) the individual was previously resident in the United States of America;
- (e) the agent has not advertised for or solicited new clients in the local jurisdiction;
- (f) the agent has delivered, or immediately after the agent first relied on this section delivers, to the securities regulatory authority
 - (i) a notice that the agent is relying on this Instrument for an exemption from the registration requirement;
 - (ii) a statement of the agent certifying that the agent is registered in the state in the United States of America where the agent was located when the agent first relied on this section; and
 - (iii) an executed Form 35-101 F2 Submission to Jurisdiction and Appointment of Agent for Service of Process;
- (g) the agent has delivered a notice to the securities regulatory authority describing any criminal or quasi-criminal proceeding brought against the agent in any jurisdiction or foreign jurisdiction, or of any decision, order, ruling, or other requirement made with respect to or imposed on the agent in a jurisdiction or foreign jurisdiction as a result of any administrative, self-regulatory or regulatory action, hearing or proceeding involving fraud, theft, deceit, misrepresentation or similar conduct;
- (h) the agent, in the course of its dealings with the broker-dealer's clients, acts fairly, honestly and in good faith.

3.2

Termination Notice - An agent shall immediately notify the securities regulatory authority if the agent will no longer engage in trading or advising activities under section 3.1.

3.3 Exemption from Adviser Registration Requirement - The adviser registration requirement does not apply to advising activities of the agent if those activities are solely incidental to trading activities of the agent under section 3.1.

PART 4 EXEMPTION FROM PROSPECTUS AND UNDERWRITER REQUIREMENTS

4.1 Exemption from Prospectus and Underwriter Requirements - The prospectus requirement and underwriter registration requirement do not apply to a distribution of foreign securities if that distribution

- (a) is made by a broker-dealer or agent that is exempt from the adviser registration requirement and the dealer registration requirement under section 2.1 or 3.1; and
- (b) is made in compliance with all applicable
 - (i) U.S. federal securities laws, and
 - (ii) state securities legislation in the United States of America.

PART 5 EFFECTIVE DATE

5.1 Effective Date - This Instrument comes into force on 16 May 2005.

FORM 35-101F1
FORM OF SUBMISSION TO JURISDICTION AND APPOINTMENT
OF AGENT FOR SERVICE OF PROCESS BY BROKER-DEALER

Instructions: Complete this form for each of the jurisdictions in which the broker-dealer seeks the conditional exemption from registration in National Instrument 35-101 (the "exemption"). Insert the name of the jurisdiction at each "•".

1. Name of broker-dealer (the "Broker-Dealer");
2. Jurisdiction of incorporation of the Broker-Dealer;
3. Name of agent for service of process (the "Agent for Service");
4. Address for service of process on the Agent for Service in •;
5. The Broker-Dealer designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the Broker-Dealer's activities in • under the exemption, and irrevocably waives any right to raise as defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.
6. The Broker-Dealer irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of • and any administrative proceeding in •, in any Proceeding arising out of or related to or concerning the Broker-Dealer's activities in • under the exemption.
7. Until six years after the Broker-Dealer ceases to use the exemption, the Broker-Dealer shall file:
 - a. a new Submission to Jurisdiction and Appointment of Agent for Service of Process in this form at least 30 days before termination for any reason of this Submission to Jurisdiction and Appointment of Agent for Service of Process; and
 - b. An amended Submission to Jurisdiction and Appointment of Agent for Service of Process at least 30 days before any change in the name or above address of the Agent for Service.
8. This submission to Jurisdiction and Appointment of Agent for Service of Process is governed by and construed in accordance with the laws of •.

Dated:

(Signature of Broker-Dealer or
authorized signatory)

(Name and Title of Authorized
Signatory)

Acceptance

The undersigned accepts the appointment as agent for service of process on **(Insert name of Broker-Dealer)** under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service of Process.

Dated:

(Signature of Agent for Service or
authorized signatory)

(Name and Title of Authorized
Signatory)

FORM 35-101F2
FORM OF SUBMISSION TO JURISDICTION AND
APPOINTMENT OF AGENT FOR SERVICE OF PROCESS
BY AGENTS OF THE BROKER-DEALER

Instructions: Complete this form for each of the jurisdictions in which agents of the broker-dealer seek the conditional exemption from registration in National Instrument 35-101 (the "exemption"). Insert the name of the jurisdiction at each "•".

1. Name of the broker-dealer (the "Broker-Dealer");
2. Jurisdiction of incorporation of the Broker-Dealer;
3. Name(s) and address(es) of agent(s) of the Broker-Dealer filing this form (the "Broker-Dealer Agents");
4. Name of agent for service of process (the "Agent for Service");
5. Address for service of process on the Agent for Service in •;
6. Each Broker-Dealer Agent Filing Person designates and appoints the Agent for Service at the address of the Agent for Service stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the Broker-Dealer Agent's activities in • under the exemption, and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.
7. Each Broker-Dealer Agent irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of • and any administrative proceeding in •, in any Proceeding arising out of or related to or concerning the Broker-Dealer Agent's activities in • under the exemption.
8. Until the earlier of the termination of a Broker-Dealer Agent's position as an agent of the Broker-Dealer and six years after the Broker-Dealer ceases to use the exemption, the Broker-Dealer Agent shall file:
 - a. a new Submission to Jurisdiction and Appointment of Agent for Service of Process in this form at least 30 days prior to termination for any reason of this Submission to Jurisdiction and Appointment of Agent for Service of Process; and
 - b. an amended Submission to Jurisdiction and Appointment of Agent for Service of Process at least 30 days before any change in the name or above address of the Agent for Service.
9. This Submission to Jurisdiction and Appointment of Agent for Service of Process is governed by and construed in accordance with the laws of •.

Dated:

(Signature of Broker-Dealer Agent)

Dated:

(Signature of Broker-Dealer Agent)

Dated:

(Signature of Broker-Dealer Agent)

Dated:

(Signature of Broker-Dealer Agent)

Acceptance

The undersigned accepts the appointment as agent for service of process on **(Insert name(s) of Broker-Dealer Agent(s))** pursuant to the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service of Process.

Dated:

(Signature of Agent for Service or
authorized signatory)

(Name and Title of Authorized
Signatory)