

Exempt Market Dealers Are Now Authorized to Participate in Prospectus Offerings

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Exempt Market Dealers (EMDs) in British Columbia, Alberta, Saskatchewan, Ontario, Quebec, and Nova Scotia can now, under certain conditions, participate in prospectus offerings as part of a selling group. Effective June 20, 2024, this change comes through new temporary blanket orders issued by the securities regulatory authorities in these jurisdictions (the Blanket Orders). New Brunswick is expected to issue a similar blanket order. Prior to implementation of the Blanket Orders, EMDs were restricted to acting as dealers only where a distribution was made pursuant to an exemption from the prospectus requirement contained in the relevant securities legislation and in certain other limited circumstances. EMDs were not permitted to participate in a prospectus offering.

The Blanket Orders follow the January 2021 recommendation of the [Capital Markets Modernization Taskforce](#) to the Ontario government to amend Ontario securities laws to allow EMDs to participate as members of a selling group in prospectus offerings.

Practical Implications

The issuance of the Blanket Orders illustrates an acknowledgement by the provinces and regulatory authorities that EMDs play a critical role in assisting start-ups and small- and medium- sized issuers raise capital. As the issuers grow and mature, the issuers may seek financing through the distribution of their securities under a prospectus. EMDs have historically been unable to continue to support these businesses, as EMDs have been limited to acting in respect of distributions of securities under a prospectus exemption. In particular, EMDs were historically not able to participate as a member of a selling group in prospectus offerings.

The Blanket Orders aim to provide support for issuers by allowing EMDs to continue their involvement as these issuers grow and begin to tap into the public markets. The Blanket Orders are intended to make available additional sources of capital for issuers, offer more opportunities to investors and allow EMDs to support an issuer's entire lifecycle.

Restrictions

The Blanket Orders provide that an EMD may act as a dealer in a distribution of securities made under a prospectus, provided that certain conditions are satisfied, including the following:

- the EMD must act in accordance with the selling group agreement with the issuer or the investment dealer acting as the lead underwriter of the offering;
- the EMD can only trade in the offering's securities to persons in respect of whom a prospectus exemption would be available if the prospectus offering was made under a prospectus exemption (for example, accredited investors);
- the EMD must not act as an “underwriter” in connection with the prospectus offering and its interest in the offering must be limited to receiving “usual and customary distributor’s or seller’s commission” payable by an underwriter or issuer. The purpose of this condition is to ensure that the EMD’s activities fall within the exemption from the definition of underwriter contained in the relevant provincial securities legislation. For example, the definition of underwriter in the *Securities Act* (Ontario) excludes persons receiving “usual and customary distributor’s or seller’s commission”; and
- the EMD’s total compensation must not exceed 50% of the lowest total compensation payable to a selling group member that is an investment dealer.

EMDs that plan to rely on the Blanket Orders are required under National Instrument 33-109 – *Registration Information* to report a change in business activity by filing a Form 33-109F5 Change of Registration Information which indicates that they intend to participate as a selling group member in prospectus offerings.

The Blanket Orders will remain in effect until December 20, 2025, unless extended by the participating jurisdictions.

For more information, see [CSA Notice Regarding Coordinated Blanket Order 31-930 Exemption to Allow Exempt Market Dealer Participation in Selling Groups in Offerings of Securities Under a Prospectus](#).

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.