

Statement of Policy on Exclusions from the Definition of “Broker-Dealer” and “Agent” for Canadian Broker-Dealers and Agents and Exemption for Transactions by Excluded Canadian Broker-Dealers and Agents

The Office of the Louisiana Commissioner of Securities hereby adopts the following Statement of Policy (“Policy Statement”):

The first category of activity covered by this policy concerns certain securities transactions which may take place between Canadian nationals while visiting in this state and Canadian broker-dealers and agents located in Canada. As a matter of policy, the definition of “broker-dealer” and “agent-salesperson” defined in Section 702 of the Louisiana Securities Law does not include a Canadian registered broker-dealer or agent who is a resident of Canada, has no offices or other physical presence in the State of Louisiana and who complies with the following conditions:

1. Only effects or attempts to effect transactions in securities
  - a. With or through the issuers of securities involved in the transaction, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies (as defined in the Investment Company Act of 1940), pension or profit sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;
  - b. With or for a person from Canada who is present temporarily in the State of Louisiana, and with whom the Canadian broker-dealer or agent had a bona fide business relationship before the person entered this state; or
  - c. With or for a person from Canada who is present in Louisiana, whose transactions are in a self-directed tax-advantaged retirement plan in Canada of which the person is the holder or contributor; and
2. The Canadian broker-dealer or agent is current with the application form required by the jurisdiction in which the head office of such person is located;
3. The Canadian broker-dealer or agent is a member of a duly authorized self-regulatory organization or stock exchange in Canada;
4. The Canadian broker-dealer or agent maintains the provincial or territorial registration and membership in a self-regulatory organization or stock exchange of such person in good standing;
5. The Canadian broker-dealer or agent discloses to its clients in this state that it is not subject to the full regulatory requirements of the Louisiana Securities Law; and
6. The Canadian broker-dealer or agent is not otherwise in violation of the Louisiana Securities Law.

Any offer, sale or purchase of a security effected by a Canadian broker-dealer excluded from the definition of “broker-dealer” pursuant to this Policy Statement shall be exempt from the Securities registration requirements of the Louisiana Securities Law.

For purposes of this Policy Statement, the term “temporary”, found at paragraph 1(b), intends to apply to vacationers and other Canadians who intend to return to Canada within a reasonable time. The position of the Office of the Louisiana Commissioner of Securities is that if the Canadian broker-dealer has in its file a representation from the account holder that he or she intends to return to Canada at a future date, the broker-dealer can rely on that statement. This statement has to be accompanied by the disclosure required by paragraph 5 and, in effect, allows the customer to continue doing business while present in the United States with a Canadian broker-dealer with whom he or she has had a prior satisfactory relationship.

The second category of activity covered by this policy is trading in self-directed tax-advantaged retirement plan accounts. These accounts, which are called Registered Retirement Savings Plans (“RRSP's”), have two features which make it impractical to transfer them to a U.S. broker-dealer. First, the account must be sited in Canada with a Canadian trustee. The account cannot be run through the books of a non-Canadian broker-dealer. Second, the securities held in the account must be predominately Canadian. Few U.S. broker-dealers have sufficient trading activity in Canadian securities to justify the expense of following Canadian companies. These two factors counsel permitting Canadian persons to continue account activity with the Canadian broker-dealer. Collapsing the account results in adverse tax consequences for Canadian persons.

The Canadian broker-dealers and agents can act only within the scope of this limited Policy Statement. Any activity beyond the scope of this limited Policy Statement will constitute unregistered activity and be subject to both state enforcement action and civil liability. State enforcement action and civil liability will attach to any violations of the anti-fraud provisions of the Louisiana Securities Law.

*Statement of Policy*, Harry C. Stansbury, Deputy Commissioner of Securities, Office of Financial Institutions, 1-30-2002.