

2.1.6 UBS Securities Canada Inc.

Headnote

Pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the prohibition on the use of corporate officer titles by certain registered individuals in respect of institutional clients – Relief does not extend to interactions by registered individuals with retail clients.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.18(2)(b) and 15.1(2).

December 31, 2021

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)**

AND

**IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS
IN MULTIPLE JURISDICTIONS**

AND

**IN THE MATTER OF
UBS SECURITIES CANADA INC.
(the Filer)**

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), the Filer and its Registered Individuals (as defined below) are exempt from the prohibition in paragraph 13.18(2)(b) of NI 31-103 that a registered individual may not use a corporate officer title when interacting with clients, unless the individual has been appointed to that corporate office by their sponsoring firm pursuant to applicable corporate law, in respect of Clients (as defined below) (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is

intended to be relied upon by the Filer and its Registered Individuals (as defined below) in each of Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Quebec and Saskatchewan (together with the Jurisdiction, the **Jurisdictions**) in respect of the Exemption Sought.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation incorporated under the laws of Ontario with its head office located in Toronto, Ontario.
2. The Filer is registered as an investment dealer in the Jurisdictions, and is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**).
3. The Filer is not in default of securities legislation in any of the Jurisdictions.
4. The Filer offers limited financial services to non-individual institutional clients. The Filer does not onboard or interact with retail clients.
5. The Filer is the sponsoring firm for registered individuals that interact with clients and use a corporate officer title without being appointed to the corporate office of the Filer pursuant to applicable corporate law (the **Registered Individuals**). The number of Registered Individuals may increase or decrease from time to time as the business of the Filer changes. As of the date of this decision, the Filer has approximately three Registered Individuals.
6. The current titles used by the Registered Individuals include the words “Director”, “Executive Director”, and “Managing Director”, and the Registered Individuals may use additional corporate officer titles in the future (collectively, the **Titles**).
7. The Filer has a process in place for awarding the Titles, which sets out the criteria for each of the Titles. The Titles are based on criteria including seniority and experience, and a Registered Individual’s sales activity or revenue generation is not a primary factor in the decision by the Filer to award one of the Titles.
8. The Registered Individuals interact only with institutional clients that are, each, a non-individual “institutional client” as defined in IIROC Rule 1201 (the **Clients**).

9. Section 13.18 of NI 31-103 prohibits registered individuals in their client-facing relationships from, among other things, using titles or designations that could reasonably be expected to deceive or mislead existing and prospective clients. Paragraph 13.18(2)(b) of NI 31-103 specifically prohibits the use of corporate officer titles by registered individuals who interact with clients unless the individuals have been appointed to those corporate offices by their sponsoring firms pursuant to applicable corporate law.
10. There would be significant operational and human resources challenges for the Filer to comply with the prohibition in paragraph 13.18(2)(b). In addition, the Titles are widely used and recognized throughout the institutional segment of the financial services industry within Canada and globally, and being unable to use the Titles has the potential to put the Filer and its Registered Individuals at a competitive disadvantage as compared to non-Canadian firms that are not subject to the prohibition and who compete for the same institutional clients.
11. Given their nature and sophistication, the use of the Titles by the Registered Individuals would not be expected to deceive or mislead existing and prospective Clients.
12. For the reasons provided above, it would not be prejudicial to the public interest to grant the Exemption Sought.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted, provided that, when using the Titles, the Filer and its Registered Individuals interact only with existing and prospective clients that are exclusively non-individual “institutional clients” as defined in IIROC Rule 1201.

This decision will terminate six months, or such other transition period as may be provided by law, after the coming into force of any amendment to NI 31-103 or other applicable securities law that affects the ability of the Registered Individuals to use the Titles in the circumstances described in this decision.

“Debra Foubert”
Director, Compliance and Registrant Regulation
Ontario Securities Commission

OSC File #: 2021/0662

2.1.7 Mulvihill Capital Management Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from requirement in section 59 of the Securities Act (Ontario) to provide an underwriter’s certificate in respect of an ETF prospectus – relief from take-over bid requirements of NI 62-104 in respect of normal-course purchases of securities of an ETF.

Applicable Legislative Provisions

Securities Act (Ontario) – R.S.O. 1990, c. S.5, as am., ss. 59(1) and 147.
National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2 and s. 6.1.

January 25, 2022

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)**

AND

**IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS
IN MULTIPLE JURISDICTIONS**

AND

**IN THE MATTER OF
MULVIHILL CAPITAL MANAGEMENT INC.
(the Filer)
AND
MULVIHILL ENHANCED YIELD CANADIAN BANK ETF
AND
MULVIHILL PREMIUM YIELD PLUS ETF
(the Proposed ETFs)**

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Proposed ETFs and any additional exchange-traded mutual funds established and managed by the Filer or an affiliate of the Filer in the future (the **Future ETFs**, and together with the Proposed ETFs, the **ETFs**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that exempts:

- (a) the Filer and each ETF from the requirement to include a certificate of the underwriter(s) in an ETF’s prospectus (the **Underwriter’s Certificate Requirement**) (the **Underwriter’s Certificate Relief**); and