

expected to deceive or mislead existing and prospective Institutional Clients.

15. For the reasons provided above, it would not be prejudicial to the public interest to grant the Exemption Sought.

**Decision**

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Marker to make the decision.

The decision of the Decision Makers 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.

“Gordon Johnson”  
Vice Chair  
British Columbia Securities Commission

Application File #: 2021/0722

**2.1.9 UBS Securities LLC**

**Headnote**

U.S. registered broker-dealer exempted from the dealer registration requirement in subsection 25(1) of the Act to permit its provision of certain prime brokerage services (which do not include the execution of trades) – Exemption limited to trades in “Canadian securities” (which the decision defines as a security that is not a “foreign security” as that term is defined in subsection 8.18(1) of NI 31-103) for certain (institutional) permitted clients – Exemption is subject to a 5-year sunset clause.

**Applicable Legislative Provisions**

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 1(1), 19, 19(1), 19(2), 25(1), 74(1).

Instruments Cited

Multilateral Instrument 11-102 Passport System, ss. 4.4(c), 4.7, 4.7(1).  
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 1.1, 8.5, 8.18, 8.18(1), 8.18(2), 8.21,  
Form 31-103F1 Calculation of Excess Working Capital.  
National Instrument 81-102 Investment Funds, Part 6.  
Ontario Securities Commission Rule 13-502 Fees.

**March 5, 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  
UBS SECURITIES LLC  
(the Filer)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filer (the **Application**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Filer from the dealer registration requirement under section 25(1) of the *Securities Act* (Ontario) (the **Act**) in respect of Prime Services (as defined below) relating to Canadian securities (as defined below) that are provided in Canada to Institutional Permitted Clients (as defined below) (the **Exemption Sought**).

The principal regulator granted similar relief to the Filer in a decision dated February 16, 2017, subject to a five-year sunset clause (the **Previous Decision**). The Previous Decision expired on February 15, 2022 (the **Termination Date**). The principal regulator received the Application prior to the Termination Date.

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

- (a) the Ontario Securities Commission (**OSC**) is the principal regulator for this Application, and
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada in which the Filer relies on the exemption found in section 8.18 [*International dealer*] of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) other than the province of Alberta (the **Passport Jurisdictions** and together with the Jurisdiction, the **Jurisdictions**).

#### 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.

For the purposes of this decision, the following terms have the following meanings:

“**Canadian security**” means a security that is not a foreign security;

“**foreign security**” has the meaning ascribed to that term in subsection 8.18(1) of NI 31-103;

“**Institutional Permitted Client**” means a “permitted client” as defined in section 1.1 of NI 31-103, except for: (a) an individual, (b) a person or company acting on behalf of a managed account of an individual, (c) a person or company referred to in paragraph (p) of that definition, unless that person or company qualifies as a permitted client under another paragraph of that definition, or (d) a person or company referred to in paragraph (q) of that definition unless that person or company has net assets of at least \$100 million as shown on its most recently prepared financial statements or qualifies as a permitted client under another paragraph of that definition;

“**Prime Services**” means any of the following: (a) settlement, clearing and custody of trades, client cash and securities positions, (b) financing of long inventory; (c) lending and delivering securities on behalf of a client pursuant to a margin agreement to facilitate client short sales; (d) securities borrowing and/or lending pursuant to a securities lending agreement; (e) asset servicing, and (f) reporting of positions, margin and other balances and activity. For

greater clarity, Prime Services do not include execution of trades in securities;

“**Prime Services Clients**” means an Institutional Permitted Client to whom the Filer provides Prime Services in the Jurisdictions in respect of Canadian securities in addition to foreign securities.

#### Representations

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

1. The Filer is a limited liability company organized under the laws of the State of Delaware, United States of America (**U.S.**). Its head office is located at 1285 Avenue of the Americas, New York, NY 10019 U.S. The Filer is an indirect wholly owned subsidiary of UBS AG, a publicly owned Swiss banking corporation.
2. The Filer is registered as a broker-dealer with the U.S. Securities and Exchange Commission (**SEC**) and is a member of the Financial Industry Regulatory Authority (**FINRA**). This registration and membership permits the Filer to provide Prime Services in the U.S.
3. The Filer is a member of a number of major U.S. securities exchanges, including the New York Stock Exchange and NASDAQ. The Filer is a Foreign Approved Participant of the Montreal Exchange and a Registered Futures Commission Merchant of ICE Futures Canada, Inc. The Filer is also a member of the Chicago Board of Trade, the Chicago Mercantile Exchange, ICE Futures Exchange, and other principal U.S. commodity exchanges and trades through affiliated or unaffiliated member firms on other exchanges, including exchanges in Canada, France, Italy, Japan, Singapore, Spain, Taiwan, Mexico, Korea and the United Kingdom.
4. The Filer provides a variety of capital raising, investment banking, market making, brokerage, and advisory services, including fixed income and equity sales and research, commodities trading, foreign exchange sales, emerging markets activities, securities lending, investment banking and derivatives dealing for governments, corporate and financial institutions. The Filer also conducts proprietary trading activities.
5. The Filer provides trade execution services and Prime Services through two different business units and the two business units are separated by information barriers. The Filer relies on section 8.18 [*International dealer*] of NI 31-103 to provide trade execution services in respect of “foreign securities” as defined in that section with Canadian resident “permitted client” as defined in NI 31-103. The Filer also relies on the exemptions found in section 8.5 [*Trades through or to a registered dealer*], in paragraphs (a), (b) and (f) of subsection 8.18(2)

- [*International dealer*], and in section 8.21 [*Specified debt*] of NI 31-103 to provide limited trade execution services in respect of securities of Canadian issuers.
6. The Prime Services provided by the Filer to its Prime Services Clients principally consist of the following: (a) settlement, clearing and custody of trades; (b) financing of long inventory; (c) securities borrowing and/or lending pursuant to a securities lending agreement or delivering securities on behalf of a client pursuant to a margin agreement, in each case, to facilitate client short sales; and (d) reporting of positions, margin and other balances and activity. For greater clarity, Prime Services do not include execution of trades in securities.
  7. The Filer offers Prime Services in the Jurisdictions to Institutional Permitted Clients in respect of Canadian securities and securities of non-Canadian issuers.
  8. In the case of a Prime Services Client that is an investment fund subject to Part 6 of National Instrument 81-102 *Investment Funds (NI 81-102)*, the custodianship requirements in Part 6 of NI 81-102 would only permit the Filer to provide the Prime Services to the investment fund as a sub-custodian of the investment fund in respect of portfolio assets held outside Canada and the Filer would provide Prime Services to an investment fund in compliance with the securities laws applicable to the investment fund, including Part 6 of NI 81-102 and the custody requirements set out in NI 31-103.
  9. Prime Services Clients seek Prime Services from the Filer in order to separate the execution of a trade from the clearing, settlement, custody and financing of a trade. This allows the Prime Services Client to use many executing brokers, without maintaining an active, ongoing custody account with each executing broker. It also allows the Prime Services Client to consolidate settlement, clearing, custody and financing of securities in an account with the Filer.
  10. The Filer's Prime Services Clients directly select their executing brokers. The Filer does not require its Prime Services Clients to use specific executing brokers through which Prime Services Clients must execute trades. Prime Services Clients send trade orders to the executing broker who carries out the trade. The executing broker will be an appropriately registered dealer or a person or company relying on an exemption from the dealer registration requirement that permits such executing broker to execute the trade for Prime Services Clients.
  11. The Filer provides the Prime Services after the execution of the trade, but any commitment to provide financing or to lend or borrow securities in relation to a trade may be made prior to the execution of the trade. The executing broker will communicate the trade details to a Prime Services Client and the Filer or the Filer's clearing agent, as applicable. A Prime Services Client will also communicate the trade details to the Filer. For trades executed on a Canadian marketplace, the Filer will typically need to clear and settle the trades through a participant of the Canadian depository, clearing and settlement hub, CDS Clearing and Depository Services Inc.
  12. The Filer exchanges money or securities and holds the money or securities in an account for each Prime Services Client. If the Filer is clearing and settling the trade through a clearing agent, the Filer's clearing agent exchanges money or securities and holds the money or securities in an omnibus account for the Filer, who in turn maintains a record of the position held for the Prime Services Client on its books and records.
  13. On or following settlement, the Filer provides the other Prime Services as set out in paragraph 6.
  14. The Filer enters into written agreements with each of its Prime Services Clients for the provision of Prime Services.
  15. The Filer currently relies on the "international dealer exemption" under section 8.18 [*international dealer*] of NI 31-103 in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Québec and Saskatchewan to provide Prime Services in respect of foreign securities.
  16. The Filer has been providing Prime Services in the Jurisdictions in reliance on the Previous Decision since February 16, 2017. The Filer is not registered under the securities legislation of any jurisdiction of Canada, is in the business of trading, and in the absence of the Exemption Sought, cannot provide the full range of Prime Services in the Jurisdictions in respect of Canadian securities without registration, except as permitted under section 8.5 [*trades through or to a registered dealer*], under the exemptions found in paragraphs (a), (b) and (f) of subsection 8.18(2) [*international dealer*], and under section 8.21 [*specified debt*] of NI 31-103.
  17. The Filer is subject to regulatory capital requirements under the 1934 Act, specifically SEC Rule 15c3-1 *Net Capital Requirements for Brokers or Dealers (SEC Rule 15c3-1)* and SEC Rule 17a-5 *Reports to be Made by Certain Brokers and Dealers (SEC Rule 17a-5)*.
  18. SEC Rule 15c3-1 requires that the Filer account for any guarantee of debt of a third party in calculating its excess net capital. In particular, in the event that the Filer provides a guarantee of any debt of a third party, it will be required to deduct the total amount of the guarantee in calculating its net capital. The Filer does not guarantee the debt of any third party.

19. SEC Rule 15c3-1 is designed to provide protections that are substantially similar to the protections provided by the capital formula requirements and specifically risk adjusted capital to which dealer members of IROC are subject. The Filer is in compliance with SEC Rule 15c3-1 and is in compliance in all material respects with SEC Rule 17a-5. If the Filer's net capital declines below the minimum amount required, the Filer is required to notify the SEC and FINRA pursuant to SEC Rule 17a-11 *Notification Provisions for Brokers and Dealers (SEC Rule 17a-11)*. The SEC and FINRA have the responsibility to provide oversight over the Filer's compliance with SEC Rule 15c3-1 and SEC Rule 17a-5.
20. The Filer is required to prepare and file a financial report, which includes Form X-17a-5 (the **FOCUS Report**), which is the financial and operational report containing a net capital calculation, and a compliance report annually with the SEC and FINRA pursuant to SEC Rule 17a-5(d). The FOCUS Report provides a more comprehensive description of the business activities of the Filer, and more accurately reflects those activities including client lending activity, than would be provided by Form 31-103F1 *Calculation of Excess Working Capital (Form 31-103F1* under NI 31-103). The net capital requirements computed using methods prescribed by SEC Rule 15c3-1 are based on all assets and liabilities on the books and records of a broker-dealer whereas Form 31-103F1 is a calculation of excess working capital, which is a computation based primarily on the current assets and current liabilities on the books and records of the dealer. The Filer is up-to-date in its submissions of annual reports under SEC Rule 17a-5(d), including the FOCUS Report.
21. The Filer is subject to regulations of the Board of Governors of the Federal Reserve System (**FRB**), the SEC and FINRA regarding the lending of money, extension of credit and provision of margin to clients (the **U.S. Margin Regulations**) that provide protections that are substantially similar to the protections provided by the requirements regarding the lending of money, extension of credit and provision of margin to clients to which dealer members of IROC are subject. In particular, the Filer is subject to the margin requirements imposed by the FRB, including Regulation T and under applicable SEC rules and under FINRA Rule 4210. The Filer is in compliance in all material respects with applicable U.S. Margin Regulations.
22. The Filer holds customer assets in accordance with Rule 15c3-3 of the 1934 Act (**SEC Rule 15c3-3**). SEC Rule 15c3-3 requires the Filer to segregate and keep segregated all "fully-paid securities" and "excess margin securities" (as such terms are defined in SEC Rule 15c3-3) of its customers from its proprietary assets. In addition to the segregation of customers' securities, SEC Rule 15c3-3 requires the Filer to deposit an amount of cash or qualified government securities determined in accordance with a reserve formula set forth in SEC Rule 15c3-3 in an account entitled "Special Reserve Account for the Exclusive Benefit of Customers" of the Filer at separate banks and/or custodians. The combination of segregated securities and cash reserve are designed to ensure that the Filer has sufficient assets to cover all net equity claims of its customers and provide protections that are substantially similar to the protections provided by the requirements to which dealer members of IROC are subject. If the Filer fails to make an appropriate deposit, the Filer is required to notify the SEC and FINRA pursuant to SEC Rule 15c3-3(i). The Filer is in material compliance with the possession and control requirements of SEC Rule 15c3-3.
23. The Filer is a member of the Securities Investors Protection Corporation (**SIPC**) and, subject to the eligibility criteria of SIPC, Prime Services Clients' assets held by the Filer are insured by SIPC against loss due to insolvency.
24. Subject to the decision requested as a consequence of the recent expiry of the Previous Decision, the Filer is not in default of securities legislation or commodity futures legislation in any jurisdiction in Canada. The Filer is in compliance in all material respects with U.S. securities laws.
25. The Filer submits that the Exemption Sought would not be prejudicial to the public interest because:
- (a) the Filer is regulated as a broker-dealer under the securities legislation of the U.S., and is subject to the requirements referred to in paragraphs 17 to 22;
  - (b) the availability of and access to Prime Services in respect of Canadian securities is important to Canadian institutional investors who are active participants in the international marketplace;
  - (c) the Filer provides Prime Services in the Jurisdictions in respect to Canadian securities only to Institutional Permitted Clients;
  - (d) the OSC has entered into a memorandum of understanding with the SEC regarding mutual assistance in the supervision and oversight of regulated entities that operate on a cross-border basis in the U.S. and Canada; and
  - (e) the OSC has entered into a memorandum of understanding with FINRA to provide a formal basis for the exchange of regulatory information and investigative assistance.
26. The Filer is a "market participant" as that term is defined under subsection 1(1) of the Act. As a

market participant, among other requirements, the Filer is required to comply with the record keeping and provision of information provisions under section 19 of the Act, which include the requirement to keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs, and the transactions it executes on behalf of others and to deliver such records to the OSC if required.

27. If in the future the Filer wishes to offer Prime Services in Alberta, the Filer will not rely on subsection 4.7(1) of MI 11-102 to passport this decision into Alberta.

**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 so long as the Filer:

- (a) has its head office or principal place of business in the U.S.;
- (b) is registered as a broker-dealer under the securities legislation of the U.S., which permits the Filer to provide the Prime Services in the U.S.;
- (c) is a member of FINRA;
- (d) is a member of SIPC;
- (e) is subject to requirements over regulatory capital, lending of money, extension of credit, provision of margin, financial reporting to the SEC and FINRA, and segregation and custody of assets which provide protections that are substantially similar to the protections provided by the rules to which dealer members of IIROC are subject;
- (f) limits its provision of Prime Services in the Jurisdictions in respect of Canadian securities to Institutional Permitted Clients;
- (g) does not execute trades in Canadian securities with or for Prime Services Clients, except as permitted under applicable Canadian securities laws;
- (h) does not require its Prime Services Clients to use specific executing brokers through which Prime Services Clients must execute trades;
- (i) submits the financial report and compliance report as described in SEC Rule 17a-5(d) to the OSC on an annual basis, at the same time such reports are filed with the SEC and FINRA;

- (j) submits audited financial statements to the OSC on an annual basis, within 90 days of the Filer's financial year end;
- (k) submits to the OSC immediately a copy of any notice it files under SEC Rule 17a-11 or under SEC Rule 15c3-3(i) with the SEC and FINRA;
- (l) complies with the filing and fee payment requirements that would be applicable to the Filer if it were a registrant firm under OSC Rule 13-502 Fees;
- (m) files in an electronic and searchable format with the OSC such reports as to any or all of its trading activities in Canada as the OSC may, upon notice, require from time to time; and
- (n) pays the increased compliance and case assessment costs of the principal regulator due to the Filer's location outside Ontario, including, as required, the reasonable cost of hiring a third party to perform a compliance review on behalf of the principal regulator.

This decision shall expire five years after the date hereof.

This decision may be amended by the OSC from time to time upon prior written notice to the Filer.

"Lawrence P. Haber"  
Commissioner  
Ontario Securities Commission

"Frances Kordyback"  
Commissioner  
Ontario Securities Commission

Application File #: 2021-0068