

**Notice No. 34-701**

**In The Matter of the  
Securities Act, R.S.N.S. 1989, c. 418, as amended (the Act)**

**-And-**

**In the Matter of Certain Duties of Registrants Engaging or  
Intending to Engage in a Business or Employment Activity  
Outside That of the Sponsoring Firm**

**A. Introduction:**

This Nova Scotia Securities Commission Staff Notice 34-701 (Staff Notice) sets forth answers to questions that are frequently asked by individual registrants who engage or are considering engaging in an employment or business activity outside that permitted by their registration. These answers take the form of notes to the relevant requirements that are set out in this Staff Notice.

In some cases certain registrants may be carrying on activities outside that permitted by their registration, without the explicit approval of the Director of Securities (Director) in writing, as required by Nova Scotia securities laws.

The purpose of this Staff Notice is to assist individual registrants and those responsible for discharging the regulatory duties of sponsoring firms to better understand what is required of them in relation to certain activities outside their principal business, pursuant to the requirements of the Act and the General Securities Rules (GSR) made under the Act.

Individual registrants in Nova Scotia who are employed to act on behalf of sponsoring firms that are members of a recognized self regulatory organization, either the Investment Dealers Association of Canada (IDA) or the Mutual Fund Dealers Association of Canada (MFDA), are reminded that they are required to comply also with the relevant by-laws, rules or regulations of the IDA or MFDA to the extent that such by-laws, rules or regulations are not inconsistent with Nova Scotia securities laws.

In general, non-compliance with relevant requirements that has not been disclosed to the Director, and failure to obtain the necessary approvals, may, in an appropriate case, give rise to proceedings under the Act and the imposition of sanctions and penalties, including but not limited to cancellation of a registration in an appropriate case. Commission staff, however, wish to remind individual registrants and their sponsoring firms that where they make voluntary disclosure of non-compliance with a registration requirement, and in the opinion of staff the non-compliance is not the result of any bad faith on the part of either the individual registrant or the sponsoring firm, and staff is also satisfied that the non-compliance has not caused any damage either to a private interest or the public interest in

general, staff's practice is not to initiate enforcement action against the non-complying individual registrant or the sponsoring firm provided they submit a plan satisfactory to the Director to purge the non-compliance, and ensure compliance with applicable registration requirements going forward.

### **B. The Full Time Employment Rule and the Duty to Deal Fairly, Honestly and in Good Faith:**

Subsection 44(1) of the GSR provides that, subject to subsections (2) and (3) thereof, "an individual shall not be granted registration or renewal of registration as a salesman unless he is employed full time as a salesman." The full time employment rule, however, does not apply in respect of the activities listed in subsection 44(2).

In respect of outside activities that may give rise to a perception of a conflict of interest between the individual registrant and his duties as a salesperson, clause 44(2)(h) of the GSR provides that the full time employment rule does not apply to an individual registrant where "the individual is carrying on an activity which in the opinion of the Director and the employer will not in the circumstances interfere with his duties and responsibilities as a salesman and there is no conflict of interest arising from his duties as a salesman and his outside activity."

Clause 44(2) (j) of the GSR provides that the full-time employment rule does not apply where "the Director is of the opinion that non-compliance with subsection (1) is not prejudicial to the public interest."

Circumscribing subsection 44(2) is subsection 44(3) which provides that "any activity outside the securities business may be carried on by a salesman only with the explicit approval, in writing, of the Director".

In addition, subsection 62(1) of the GSR provides that "every officer, partner, salesman and registered director of a registrant shall deal fairly, honestly and in good faith with the customers and clients of the registrant."

### **C. Relevant Registration Application Disclosure Requirements**

Commission staff also note that pursuant to Commission Rule 33-109 that has adopted as a rule in Nova Scotia National Instrument 33-109-Registration Information, all individual applicants at the time of filing their registration applications on the NRD system must disclose in their submission using the prescribed Form 33-109F4 under Item 10 their "current business and employment activities", including but not restricted to those with the sponsoring firm. In the Form's Schedule "G"-Current Employment that provides instructions for completing Item 10, the applicant is required to disclose the number of hours per week that he or she will be devoting to the described current business or employment, and if the business or employment with the sponsoring firm is to require the applicant to work less than 30 hours a week, to explain why the applicant will be working for less than 30 hours a week for the firm.

By virtue of the same Schedule “G”, the individual applying for registration is directed, “if the business or employment described above is not with the sponsoring firm, to disclose any potential for confusion by clients and any potential for conflicts of interest arising from your proposed activities as a registrant and the business or employment described above (include whether the business is listed on an exchange)”.

Commission staff remind registrants that these are ongoing requirements, and if there is any change in the registration information that is required to be disclosed initially, a notice is required to be filed with the Director giving timely notice of the change.

#### **D. Commission Staff Notes:**

In light of the requirements outlined above, Commission Staff provide the notes listed below as guidance for registrants who may wish to be dually employed or engage in a business activity outside that permitted by their registration:

1. An individual registrant, whether a salesperson or trading officer acting on behalf of a dealer sponsoring firm in any category, or an investment counsel or portfolio manager acting on behalf of an adviser sponsoring firm, is required to disclose to the Director, either at the time of initial application or at any time subsequent to the initial application, any current business or employment activities, including but not restricted to those with the sponsoring firm. In making the required disclosure, the individual registrant must also indicate whether or not in his or her opinion any of the employment or business activities disclosed have the potential for confusion, real or perceived, by clients or may give rise to any potential for conflict of interest, real or perceived, between his or her duties as a registrant and the business or employment activity described in the submission.
2. Where an individual registrant proposes to carry on any business or engage in any employment activity where such a potential for confusion or conflict of interest, real or perceived, may arise, the individual must include a plan approved by the sponsoring firm describing how he or she and the sponsoring firm intend to ensure that there is not in fact any real or perceived confusion or conflict of interest actually arising. Until such a plan is explicitly approved in writing by both the sponsoring firm and the Director, as required by subsection 44(3) of the GSR, the individual registrant is prohibited from engaging in the proposed activity or business.
3. Where, in the opinion of the individual registrant and the sponsoring firm, it is not possible to comply with the full-time employment rule, and that the individual registrant will not be working at least 30 hours a week for the sponsoring firm, the individual registrant must indicate in his or her submission, whether by way of an application for registration or a notice of change, which specific clause of subsection 44(2) of the GSR the individual registrant is relying on as the basis for non-compliance with the full time employment rule. Until such time as the

Director explicitly approves the non-complying activity in writing as required by subsection 44(3) of the GSR, an individual registrant is prohibited from engaging in any business or employment activity outside that contemplated by the registration.

4. In general, individual registrants and their sponsoring firms must not submit any request for non-compliance with the full time employment rule, unless it is submitted together with any additional information that may be required to address the means of managing and supervising any potential confusion, real or perceived, or potential conflicts of interest, real or perceived, for the prevention of any prejudice to any duty owed to a client or any client's interest.
5. While it is impossible to exhaustively enumerate all the kinds of business and employment activities where a possibility of confusion or conflict of interest may arise requiring the submission of a joint management and supervision plan by the individual registrant and the sponsoring firm, Commission staff notes that in the past these have arisen in a variety of illustrative situations such as: mortgage brokers, school principals and school teachers, civil servants, politicians, peace officers and firefighters.
6. Without limiting in any way the Director's discretion, Commission staff note that in addition to approving the management and supervision plan, the Director may in his or her discretion impose additional conditions or restriction on the registration of either or both of the individual registrant and the sponsoring firm.
7. A failure to disclose any business or employment activity that is required to be disclosed pursuant to National Instrument 33-109 is a contravention of Rule 33-109 and may give rise to proceedings and appropriate penalties under Nova Scotia securities laws.
8. Commission staff stress that the sponsoring firm has an ongoing duty to supervise and monitor each individual registrant that is employed in carrying out its securities related business for compliance with these as well as other applicable requirements. Managers and officers of sponsoring firms that neglect a duty to supervise and monitor diligently for compliance as necessary for the proper discharge in an individual case of the duties and regulatory requirements outlined in this Staff Notice may be found by the Commission in a proceeding to have failed in discharging a compliance related duty or obligation of the sponsoring firm, and they and the sponsoring firm may be liable to appropriate penalties and sanctions under Nova Scotia securities laws.

#### **E. CSA Harmonization Initiative**

The Canadian Securities Administrators (CSA) has created the Registration Reform Project (RRP) to harmonize the registration regimes that apply to registrants across Canada. Commission Staff consider it likely that the RRP will propose by the end of

2006 a national registration rule that when implemented would eliminate or reduce the need for local rules and establish a more harmonized approach for avoiding client confusion, conflicts of interest and any detrimental impact on proficiency where an individual registrant is dually employed or engages in outside business activities. Commission Staff intends to keep this notice under review in light of any RRP proposals, and any subsequent national rule that may be implemented, to determine whether this Staff Notice is still required in whole or in part.

#### **F. Discretion**

Nothing herein should be taken as indicating that the Nova Scotia Securities Commission (Commission) or the Director will or will not take any particular discretionary action in any given circumstance. The Commission and the Director exercise their discretion on a case by case basis in light of the relevant facts of each matter.

#### **G. Contact**

Any questions concerning this Commission Staff Notice should be directed to Brian Murphy, Deputy Director, Capital Markets. Mr. Murphy can be reached by email at [murphybw@gov.ns.ca](mailto:murphybw@gov.ns.ca) or by telephone at (902) 424-4592.

DATED at Halifax, Nova Scotia the 29th day of May, 2006.

“Nicholas A. Pittas”  
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Nicholas A. Pittas, Director of Securities