

## Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Section 144(1) of the *Securities Act* (Alberta) – Filers seek relief from the requirement in section 75(1)(a) and section 75(2)(b) of the *Securities Act* (Alberta) and its equivalent in securities legislation of the passport jurisdictions to register as an adviser in respect of the provision of advice to clients currently and formerly resident in the United States.

## Applicable Legislative Provisions

*Securities Act* (Alberta) sections 75(1)(b), 75(2)(b) and 144(1).

**Citation: Re Richardson Wealth Limited / Patrimoine Richardson Limite, 2022 ABASC**

**131**

**Date: 20220930**

In the Matter of  
the Securities Legislation of Alberta  
(the **Jurisdiction**)

and

In the Matter of the Process  
for Exemptive Relief Applications in Multiple Jurisdictions and

In the Matter of  
Richardson Wealth Limited (**RWL Canada**)  
and Richardson Wealth (USA) Limited (**RWL USA**)  
(the **Filers**)

## Decision

## Background

The principal regulator in the Jurisdiction has received a renewal application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the adviser registration requirement contained in the Legislation (**Adviser Requirement**) for:

- (a) RWL USA and those of its individual representatives who are also registered under the Legislation as dealing representatives and approved by the Investment Industry Regulatory Organization of Canada (**IIROC**) in the category of portfolio management of RWL Canada (the **Dual Representatives**) in respect of advice provided by the Dual Representatives, acting on behalf of RWL USA, to individuals formerly resident in the United States of America (**U.S.**) who now reside in the Exemption Jurisdictions, as defined below (**Ex-U.S. Clients**) if the advice is in respect of a U.S.-domiciled tax-advantaged retirement savings, education savings, or disability savings plan (collectively, **U.S. Plans**) owned by the Ex-U.S. Client (the **Ex-U.S. Client Exemptive Relief**); and

- (b) RWL USA and the Dual Representatives in relation to wealth management services that are provided to clients that are resident in the U.S. (**U.S. Clients**) (the **U.S. Client Exemptive Relief**, and together with the Ex-U.S. Client Exemptive Relief, the **Exemption Sought**).

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

- (a) the Alberta Securities Commission (the **Commission**) is the principal regulator for this application; and
- (b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec, Saskatchewan, and Yukon (the **Passport Jurisdictions** and, together with Alberta, the **Exemption 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.

### **Representations**

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

1. On December 2, 2016, the Ontario Securities Commission (**OSC**) issued a local order (the **Ontario Order**) under the *Securities Act* (Ontario) that granted to the Filers exemptive relief that was similar to the Ex-U.S. Client Exemptive Relief for a period of five years.
2. On October 5, 2017, the Commission, as principal regulator issued a passport decision (the Alberta Decision) under the Legislation and MI 11-102 that granted to the Filers exemptive relief in the Exemption Jurisdictions that was similar to the Exemption Sought for a period of five years.
3. On November 26, 2021, the Ontario Order was renewed by the OSC for another period of five years.
4. The Filers seek to renew the Alberta Decision before its expiry on October 5, 2022.
5. The Filers have complied with, and are currently in compliance with, all of the terms and conditions of the Alberta Decision.
6. RWL Canada is a wholly-owned subsidiary of RF Capital Group Inc. (RF Capital) incorporated under the federal laws of Canada. RF Capital is a public company and has its shares traded on the Toronto Stock Exchange. In addition to RWL Canada, RF Capital wholly-owns RF Securities Clearing LP and CQI Capital Management L.P. RWL Canada's head office is located in Toronto, Ontario.

7. RWL Canada carries on business in the Exemption Jurisdictions, as well as in Ontario (collectively, the Canadian Jurisdictions), from offices located in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Prince Edward Island, Saskatchewan, and Québec.
8. RWL Canada provides wealth management services to residents of Canada, including financial planning, wills and estates planning, tax planning, insurance planning, and brokerage services.
9. RWL Canada is registered as an investment dealer in each of the Canadian Jurisdictions and as a derivatives dealer in Québec. RWL Canada is a dealer member of IIROC.
10. RWL Canada is not in default of securities, commodity futures, or derivatives legislation in any Canadian Jurisdiction.
11. RWL Canada does not trade, or provide advice with respect to the trading, in securities to, with, or on behalf of U.S. Clients other than in respect of Canadian-domiciled retirement savings plans, registered retirement savings plans, registered retirement income funds, education savings, or disability savings plans (collectively, Canadian RSPs) held by U.S. Clients who were formerly resident in Canada and who have moved to the U.S. with Canadian RSPs. RWL Canada conducts this activity pursuant to an exemption from registration in the U.S.
12. RWL Canada does not carry on the business of a broker-dealer or investment adviser in the U.S. and therefore is not, and is not required to be, registered under U.S. securities law.
13. RWL USA is a wholly-owned subsidiary of RWL Canada incorporated under the federal laws of Canada. RWL USA's head office is located in Toronto, Ontario.
14. RWL USA has no physical presence in the U.S. and carries on business in the Canadian Jurisdictions from offices that it shares with RWL Canada in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Prince Edward Island, Saskatchewan, and Québec.
15. The only physical presence or office that RWL USA has, or will have, in any Canadian Jurisdiction, are the premises that it shares with RWL Canada.
16. In the Exemption Jurisdictions, RWL USA provides wealth management services including financial planning, wills and estates planning, tax planning, insurance planning, and brokerage services to U.S. Clients in reliance upon the Commission's Blanket Order 31-530 Trades and Advice for US-Resident Clients: Dealer and Adviser Registration Exemptions (BOR 31-530), parallel orders issued by the securities regulatory authorities in the Passport Jurisdictions (the Parallel Orders), and the Alberta Decision.

17. RWL USA is registered with the U.S. Securities and Exchange Commission (the SEC) as an investment adviser under the Investment Advisers Act of 1940 (United States) (the 1940 Act).
18. RWL USA, and the Dual Representatives acting on its behalf, are in compliance with any applicable adviser licensing or registration requirements under applicable U.S. securities law.
19. RWL USA is not in default of U.S. securities law or securities, commodity futures, or derivatives legislation in any Canadian Jurisdiction.
20. RWL USA is not registered under the securities, commodity futures, or derivatives legislation of any Canadian Jurisdiction.
21. RWL USA has engaged Pershing Advisor Solutions LLC (Pershing Advisor Solutions), a Delaware limited liability company, to provide for its clients investment advisory and prime brokerage services directly or through its affiliate, Pershing LLC (Pershing), a Delaware limited liability company.
22. Pershing Advisor Solutions is registered with the SEC as a broker-dealer and is a member of the Financial Industry Regulatory Authority (FINRA). Pershing is registered with the SEC as a broker-dealer and is a member of FINRA and the New York Stock Exchange.
23. Each Dual Representative acts on behalf of both Filers from the Filers' joint office in the Canadian Jurisdiction in which the Dual Representative is resident.
24. Each Dual Representative is registered as a dealing representative of RWL Canada, and approved by IIROC for portfolio management, in one or more of the Canadian Jurisdictions.
25. None of the Dual Representatives is in default of U.S. securities law or securities, commodity futures, or derivatives legislation in any Canadian Jurisdiction.
26. RWL Canada, and each Dual Representative when acting on behalf of RWL Canada, only trades to, with, or on behalf of, or advises: (i) clients of RWL Canada that are resident in the Canadian Jurisdiction(s) where he or she is registered as a dealing representative of RWL Canada and IIROC-approved for portfolio management; and (ii) U.S. Clients that were formerly resident in such Canadian Jurisdiction(s) in respect of their Canadian RSPs.
27. RWL USA, and each Dual Representative when acting on behalf of RWL USA, currently rely upon the BOR 31-530, the Parallel Orders and the Alberta Decision to advise U.S. Clients and Ex-U.S. Clients in the Exemption Jurisdictions.
28. RWL USA, and each Dual Representative when acting on behalf of RWL USA, desire to continue to advise pursuant to the Exemption Sought, Ex-U.S. Clients with respect to the

trading of securities in their U.S. Plans, despite the Ex-US Clients' residency in the Exemption Jurisdictions.

29. A Dual Representative, acting on behalf of RWL USA, would only advise Ex-U.S. Clients that are resident in an Exemption Jurisdiction if he or she is registered as a dealing representative of RWL Canada in that Exemption Jurisdiction.
30. The advice that RWL USA provides to Ex-U.S. Clients will be ancillary to RWL USA's principal business which is advising U.S. Clients.
31. RWL USA expects that the amount of revenue derived from Ex-U.S. Clients pursuant to the Exemption Sought will represent approximately 6% of its total revenue.
32. The Dual Representatives have the requisite proficiency, education, and experience to provide advice to Ex-U.S. Clients with respect to the trading of securities in their U.S. Plans.
33. It is currently intended that Pershing Advisor Solutions and Pershing will continue to provide trading, custody, clearing, and settlement services for all Ex-U.S. Clients of RWL USA in respect of their U.S. Plans pursuant to the exemption from the dealer registration requirement that is provided in section 8.18 of National Instrument 31-103 – Registration Requirements, Exemptions and Ongoing Registrant Obligations.

### **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:

- (a) the Ex-U.S. Client Exemptive Relief is granted provided that:
  - (i) RWL USA and each Dual Representative acting on its behalf, do not advertise for or solicit new clients in the Exemption Jurisdictions;
  - (ii) RWL USA remains registered as an investment adviser with the SEC under the 1940 Act;
  - (iii) RWL USA notifies the principal regulator promptly of any restrictions or conditions placed on its registration with the SEC or any sanctions imposed on it in connection with its activities as an investment adviser under a settlement agreement entered into with the SEC or an order issued by the SEC;
  - (iv) RWL USA and each Dual Representative acting on its behalf, will only execute any trades made in respect of any U.S. RSPs on behalf of an Ex-

U.S. Client through a dealer registered under the securities legislation of the relevant Exemption Jurisdiction or exempted from registration under the securities legislation of the relevant Exemption Jurisdiction;

- (v) RWL USA and each of the Dual Representatives remain in compliance with any applicable adviser licensing or registration requirements under applicable U.S. securities law;
- (vi) RWL Canada remains registered under the Legislation as an investment dealer and remains a dealer member of IIROC;
- (vii) each Dual Representative is registered under the Legislation as a dealing representative in a category that would permit it to advise Ex-U.S. Clients with respect to the trading of securities in their U.S. Plans in compliance with the Legislation, if the U.S. Plans were instead Canadian RSPs;
- (viii) RWL USA discloses to Ex-U.S. Clients that it, and the Dual Representatives acting on its behalf, are not subject to full regulatory requirements otherwise applicable under the Legislation;
- (ix) RWL USA and the Dual Representatives, in the course of their dealings with Ex-U.S. Clients, act fairly, honestly and in good faith;
- (x) RWL USA, and the Dual Representatives acting on its behalf, will comply with U.S. securities law when providing advice to Ex-U.S. Clients with respect to the trading of securities in their U.S. Plans pursuant to the Exemption Sought;
- (xi) RWL USA will promptly submit a letter to the principal regulator if the amount of revenue derived from Ex-U.S. Clients exceeds 10% of RWL USA's total revenue as at the end of each quarter. The letter will refer to this decision and this requirement, and will also provide details with respect to the percentage of the revenue derived from Ex-U.S. Clients and the date on which the revenue exceeded 10% of its total revenue;
- (xii) RWL USA:
  - (A) enters into customer agreements and associated account opening documentation with all Ex-U.S. Clients which will provide that all communications with Ex-U.S. Clients will be through RWL USA, and the Dual Representatives acting on its behalf, and will be under RWL USA branding; and
  - (B) provides all Ex-U.S. Clients with disclosure that explains the relationship between RWL USA and RWL Canada; and

- (b) the U.S. Client Exemptive Relief is granted provided that RWL USA and the Dual Representatives comply with the conditions set out in BOR 31-530 or a relevant Parallel Order, as applicable, where advice is given to a U.S. Client, with the exception of any condition in such order prohibiting the provision of advice to an Ex-U.S. Client resident in an Exemption Jurisdiction.

This decision will terminate on the earlier of:

- (a) five years after the date of this decision; and
- (b) the coming into force of a change in the Legislation exempting RWL USA from the Adviser Requirement in connection with the advice it provides to an Ex-U.S. Client with respect to U.S. Plans.

The effective date of this order is October 5, 2022.

**For the Commission:**

*“original signed by”*

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Tom Cotter  
Vice-Chair

*“original signed by”*

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Kari Horn  
Vice-Chair