



Citation: 2013 BCSECCOM 400

### Headnote

Multilateral Instrument 11-102 – *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Securities Act s. 48 Dealer – Exemption from s. 34(a) requirement to be registered as a dealer - A person not registered as a dealer in BC wants to do a trade that requires a BC registered dealer - The person is registered in the US as a broker-dealer, the person will not trade for any BC resident in reliance on this relief, the person will comply with applicable US securities laws.

1996 *Securities Act*, s. 48 Adviser – Exemption from s. 34 (b) requirement to be registered as an adviser – A person who resides in BC wants to advise US residents - The person is registered in the US as a broker-dealer, the advice is in connection with a trade in a security that the person is permitted to make under their US registration, the person will comply with applicable US securities laws - The person is registered in the US as an investment adviser, the person will not advise any BC resident in reliance on this relief, the person will comply with applicable US securities laws.

### Applicable Legislative Provisions

**Securities Act , R.S.B.C. 1996, c. 418, s. 34 (a), 34(b), and 48.**

December 3, 2013

In the Matter of the Securities Legislation of  
British Columbia and Ontario  
(the Jurisdictions)

and

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

and

In the Matter of  
Raymond James (USA) Ltd.  
(the Filer)

### Decision

### Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (each, a Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption that:



- (a) the dealer registration requirement does not apply to the Filer and its Cross Registered Representatives (as defined below) in respect of trades with, or on behalf of, persons or entities who are resident in the United States (U.S. Clients) while the Cross Registered Representatives are located in Canada (U.S. Client Trading Activities);
- (b) the adviser registration requirement does not apply to the Filer and the Cross Registered Representatives in respect of advising activities that are incidental to U.S. Client Trading Activities; and
- (c) the adviser registration requirement does not apply to the Filer and the Cross Registered Representatives in respect of discretionary and non-discretionary investment advice provided to U.S. Clients while the Cross Registered Representatives are located in Canada (U.S. Client Advising Activities)

(such activities collectively, the U.S. Client Trading and Advising Activities, and such exemptions collectively, the Exemptions Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (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 Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Yukon Territory, the Northwest Territories and Nunavut (collectively the Passport Jurisdictions); and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

### **Interpretation**

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions*, National Instrument 33-109 *Registration Information* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined. The term “Cross Registered Representatives” shall mean agents of the Filer who are registered under applicable securities legislation of the United States in categories or otherwise in a manner that permits such agents to engage in the applicable U.S. Client Trading and Advising Activities on behalf of the Filer, and who are also registered to trade with, or on behalf of, or advise Canadian clients under



applicable securities legislation in Canada as registered individuals of Raymond James Ltd. (defined below as RJL).

### **Representations**

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

1. The Filer is registered as a broker-dealer under the United States *Securities Exchange Act of 1934*, as amended (the 1934 Act), as an investment adviser under the United States *Investment Advisers Act of 1940*, as amended (the 1940 Act), and is a member of the Financial Industry Regulatory Authority (FINRA). The Filer is not a registered dealer or adviser in Canada.
2. The Filer is a company continued under the laws of Canada and has its head office in British Columbia.
3. The Filer is a wholly-owned subsidiary of Raymond James Ltd. (RJL), which is registered as a dealer under the Legislation in the category of investment dealer and is a member of the Investment Industry Regulatory Organization of Canada (IIROC).
4. Both the Filer and RJL are wholly-owned subsidiaries of Raymond James Financial, Inc., the common shares of which trade on the New York Stock Exchange.
5. The Filer is in default of securities legislation in the Jurisdictions and certain Passport Jurisdictions in respect of the following activities carried out from locations in Canada that did not comply with the registration requirements under applicable Canadian securities legislation. The Filer understands that the Exemptions Sought are only in effect from the date of this decision:
  - (a) Since 1989, the Filer (and its predecessor company) and certain of its Cross Registered Representatives executed trades for, and provided incidental investment advice to, “institutional clients” (as defined by FINRA) located in the United States, including banks, savings and loan associations, insurance companies or registered investment companies, registered investment advisers and other entities with total assets of at least U.S.\$50 million (U.S. Institutional Clients). Trades for U.S. Institutional Clients are conducted through the Filer on an agency delivery versus payment and receipt versus payment basis. The Filer has an execution and clearing arrangement through RJL. Although the Filer is not able to specify the exact number of U.S. Institutional Clients it serviced during this period, the Filer estimates that the Filer and its predecessor company have had approximately 950 U.S. Institutional Clients during this period. The Filer currently has approximately 265 U.S. Institutional Clients, of which 100 are



active. Given the period of time covered, the nature of the records maintained and systems used by the Filer and its predecessor company, and the changes in laws over this period, the Filer is not able to confirm the revenues earned from the above activities that were not in compliance with the registration requirements under applicable Canadian securities legislation.

- (b) Since February 2012, the Filer and certain of its Cross Registered Representatives have executed trades for, and provided discretionary and non-discretionary investment advice to, individual, corporate and other clients resident in the United States (U.S. Retail Clients). The Filer currently has approximately 400 accounts for U.S. Retail Clients composed of approximately 250 households. During this period (to August 31, 2013), the gross revenues of the Filer from these activities was approximately \$1,074,120.
  - (c) Although the above activities of the Filer and the Cross Registered Representatives were conducted in compliance with applicable licensing and registration requirements under applicable securities legislation of the United States, the activities did not comply with the registration requirements under applicable Canadian securities legislation because the Filer and the Cross Registered Representatives conducted the activities from locations in the Jurisdictions and the Passport Jurisdictions and were not registered in such jurisdictions to conduct such activities on behalf of the Filer and had not obtained exemptive relief in such jurisdictions to conduct such activities.
- 6. As of the date of this decision, the Filer and RJJ operate their head offices out of the same premises in British Columbia. The Filer does not have an office located in the United States. Wherever the Filer has an office in Canada, it operates out of the same premises as RJJ.
- 7. Each of the Cross Registered Representatives is employed in one of the Filer's offices located in a jurisdiction of Canada. Each Cross Registered Representative is registered under applicable securities legislation of the United States in categories or otherwise in a manner that permits such agents to engage in the applicable U.S. Client Trading and Advising Activities on behalf of the Filer, and who are also registered to trade with, or on behalf of, or advise Canadian clients under applicable securities legislation in Canada as registered individuals of RJJ.
- 8. Each of the Cross Registered Representatives will act in the Jurisdictions or the Passport Jurisdictions on behalf of the Filer in respect of providing trading services (i) to U.S. Clients, and (ii) to individuals referred to in section 2.1 and section 3.1 of National Instrument 35-101 *Conditional Exemption from Registration for United*



*States Broker-Dealers and Agents* (such individuals, NI 35-101 Clients) in accordance with a decision dated October 19, 2012 pursuant to which the Filer was granted an exemption from the dealer registration requirement, the adviser registration requirement and the prospectus requirement contained in the legislation in the Jurisdictions and in the Passport Jurisdictions of Canada in relation to trades with NI 35-101 Clients.

9. In addition to the activities described in paragraph 8, Cross Registered Representatives who are appropriately registered or exempt from registration in both Canada (with RJL) and the U.S. (with the Filer) to provide discretionary and non-discretionary investment advice will act in the Jurisdictions or the Passport Jurisdictions on behalf of the Filer in respect of discretionary and non-discretionary investment advice provided to U.S. Clients while the Cross Registered Representatives are located in Canada.
10. The Filer is subject to the full oversight and compliance requirements of FINRA and the United States Securities and Exchange Commission (SEC), despite the Filer's location and operations in Canada.
11. The Filer does not expect that the revenue derived from U.S. Clients will exceed more than 10% of the gross annual revenue generated from Canadian clients of RJL (determined based on the Filer's annual financial statements). If the revenue derived from U.S. Clients exceeds 10% of the gross annual revenue generated from Canadian clients of RJL, the Filer will forthwith file a letter to the Decision Makers advising of the same. The letter will refer to this decision document, the percentage of the gross annual revenue derived from U.S. Clients, and the date on which the revenue exceeded 10% of the gross revenue generated from Canadian clients and the date on which the Filer identified that gross revenues exceeded such threshold.
12. The Filer will not trade or advise in securities with or on behalf of persons who are resident in Canada, other than NI 35-101 Clients.
13. Cross Registered Representatives will not, on behalf of the Filer, solicit or contact clients that are resident or located in Canada, other than NI 35-101 Clients.
14. Where the Filer and the Cross Registered Representatives trade with or on behalf of U.S. Clients, they will comply with all applicable United States securities laws in respect of those trades.



15. The Filer will file with the securities regulators in the Jurisdictions and the Passport Jurisdictions such reports as to any or all of its trading activities as the securities regulators may require from time to time. The Filer will maintain 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.
16. All U.S. Clients of the Filer will enter into a customer agreement and associated account opening documentation with the Filer. All communications with U.S. Clients will be through the Filer and be clearly identified as communications of the Filer.
17. At the time of account opening and annually thereafter, all U.S. Clients will receive disclosure that:
  - (a) if they should reside in Canada at a future date, their accounts (other than accounts for their United States' individual tax-advantaged retirement savings plans) must be transferred to RJL or any other investment dealer registered under the Legislation or securities legislation in a Passport Jurisdiction;
  - (b) explains the relationship between the Filer and RJL; and
  - (c) explains how U.S. Clients may enforce any legal rights, arising out of, related to, or concerning the Filer's activities. The disclosure must also include a statement that although the Filer is registered in the United States as a broker-dealer under the 1934 Act and as an investment adviser under the 1940 Act, is a member of FINRA and has appointed an agent for service in and attorned to the jurisdiction of the United States for the purposes of being served with legal process, the Filer is a Canadian company with a head office located in Canada and is not registered as a dealer or adviser under applicable securities legislation in Canada, and accordingly, the protection available to clients of a dealer or adviser registered under securities legislation in Canada will not be available to U.S. Clients.

#### **Decision**

- ¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.



The decision of the Decision Makers under the Legislation is that the Exemptions Sought are granted, provided that the dealer and adviser registration requirements do not apply to the Filer or the Cross Registered Representatives in respect of U.S. Client Trading and Advising Activities, if

- (a) the only physical presence or offices that the Filer has in Canada are the premises it shares with RJL,
- (b) the Filer and each of the Cross Registered Representatives are in compliance with any applicable licensing and registration requirements under applicable securities legislation of the United States,
- (c) the Filer and the Cross Registered Representatives are permitted to engage in such activities with U.S. Clients under applicable securities legislation of the United States,
- (d) the Filer is subject to full FINRA and SEC oversight and compliance, and
- (e) the Filer does not trade or advise in securities with or on behalf of persons who are resident of Canada, other than NI 35-101 Clients.

Sandra Jakab  
Director, Capital Markets Regulation  
British Columbia Securities Commission