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November 7, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Application – Securities Act s. 48 Dealer - Exemption from s.34(1)(a) requirement to be registered as a dealer to trade securities - A person not registered as a dealer in BC wants to do a trade that requires a BC registered dealer - The person is registered or qualified as a dealer in the jurisdiction in which they reside or carry on business; the person will only trade exchange contracts with “accredited investors”; the person is not providing advice on the trades.

1996 Securities Act s. 48 Adviser - Exemption from s.34(1)(c) requirement to be registered as an adviser and the obligations of advisers in Part 5 of the Act and rules - A person who resides outside BC wants to advise BC residents - The person is registered or qualified to provide the advice in the jurisdiction in which they reside or carry on business; the advice is solely incidental to dealing activities for which the person has an exemption from registration.

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 34(1)(a) and (c) and 48

In the Matter of the Securities Legislation of British Columbia, Alberta and Saskatchewan (the Jurisdictions)

and

In the Matter of the Mutual Reliance Review System for Exemptive Relief Applications (the System)

and

In the Matter of FCStone, LLC, FCStone Trading, LLC and FCStone Forex, LLC (the Filers)

MRRS Decision Document

Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filers from the following requirements:

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- 1.1 the requirement to be registered as a dealer with respect to certain trades and activities of the Filers in connection with their intended Derivatives Business (as defined below); and
- 1.2 the requirement to be registered as an adviser for advice which is provided solely incidental to the Filers' Derivatives Business

(collectively, the Registration Relief).

2. Under the System

- 2.1 the Alberta Securities Commission (the ASC) is the principal regulator for this application; and
- 2.2 this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

3. Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

4. This decision is based on the following facts represented by the Filers:
 - 4.1 FCStone Group, Inc. (FCStone Group):
 - 4.1.1 is a corporation incorporated under the laws of the State of Iowa;
 - 4.1.2 was organized for the direct benefit of local farmer-owned organizations with the purpose of providing education, services and products with respect to hedging and risk management products involving commodities;
 - 4.1.3 is currently owned by approximately 550 farmer-owned co-operatives throughout the United States and Canada; and
 - 4.1.4 recently filed a registration statement with the Securities and Exchange Commission in the United States for the purpose of converting from a membership co-operative form of business to a stock corporation form of business.
 - 4.2 FCStone, LLC (FCStone) is:

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- 4.2.1 a limited liability company incorporated under the laws of the State of Iowa;
 - 4.2.2 a wholly-owned subsidiary of FCStone Group;
 - 4.2.3 registered as a futures commission merchant (FCM) with the United States Commodity Futures Trading Commission (CFTC);
 - 4.2.4 a member of the National Futures Association (NFA);
 - 4.2.5 authorized to carry out a full range of futures business activities with commercial, individual and institutional clients in the United States; and
 - 4.2.6 a direct member of all major futures exchanges in the United States as well as Eurex, with its designated self-regulatory organization being the Chicago Mercantile Exchange.
- 4.3 FCStone is not registered under the securities legislation or the commodity futures legislation of any province or territory of Canada. FCStone is unable to be registered as a dealer in the Jurisdictions because there is no available registration category for foreign dealers.
- 4.4 FCStone Trading, LLC (FCStone Trading) is:
- 4.4.1 a limited liability company incorporated under the laws of the State of Iowa;
 - 4.4.2 a wholly-owned subsidiary of FCStone Group; and
 - 4.4.3 primarily involved in the business of entering into over-the-counter (OTC) transactions in the capacity of a principal.
- 4.5 FCStone Forex, LLC (FCStone Forex):
- 4.5.1 is a limited liability company incorporated under the laws of the State of Iowa;
 - 4.5.2 is a wholly-owned subsidiary of FCStone Group; and
 - 4.5.3 primarily acts as a retail foreign currency dealer for FCStone Group's clients.

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- 4.6 The Filers are interested in offering the following services with respect to exchange contracts, commodity futures contracts, commodity futures options, foreign exchange contracts and OTC derivatives (collectively, Derivatives) to clients in the Jurisdictions:
- 4.6.1 targeted marketing of services, including visiting prospective clients in the Jurisdictions to discuss the markets, risk management strategies and opportunities applicable to Derivatives, and to promote the Filers' Derivative services;
 - 4.6.2 providing short-term and long-term market commentary and research reports for clients applicable to the Derivatives;
 - 4.6.3 receiving client orders by telephone and entering them on Recognized Exchanges (as defined below);
 - 4.6.4 entering into transactions involving Derivatives with clients;
 - 4.6.5 installing software in computer terminals located in a client's premises or offering a secure, password-protected internet site to give the client access to live market data and the ability to electronically execute orders involving Derivatives, including those on Recognized Exchanges that either only trade electronically or require a significant portion of their business to be traded electronically;
 - 4.6.6 clearing clients' Derivatives transactions on any Recognized Exchanges on which FCStone has a clearing membership or other clearing relationship;
 - 4.6.7 providing live operational information to clients by a password-protected secure web-based service, allowing clients to view their positions relating to their Derivatives, including margin commitments, order limits and other useful account information; and
 - 4.6.8 such other direct or indirect acts, solicitations, conduct and negotiations as may be ancillary to any of the above
- (collectively, the Derivatives Business).
- 4.7 FCStone Trading is able to enter into OTC transactions on behalf of clients in Alberta and British Columbia in reliance on available

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exemptions in ASC Order 91-502 *Over-the-Counter Derivatives Transactions and Commodity Products* and British Columbia Instrument 91-501 *Over-the-Counter Derivatives*. There are no similar exemptions available in Saskatchewan.

- 4.8 The Filers will restrict their Derivatives Business activities in the Jurisdictions to trading, and providing ancillary advice relating to, Derivatives for Qualified Parties in British Columbia and Alberta, and in Saskatchewan to Accredited Investors as that term is defined in National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106).
- 4.9 The Filers have undertaken to attorn to the jurisdiction of the courts and administrative tribunals of Alberta and Saskatchewan and to provide an address for service in Alberta and Saskatchewan.
- 4.10 The Filers will not advertise their services by television, radio, newspaper, internet or other media of general circulation that originate in Canada, other than industry publications.
- 4.11 The exchanges (Recognized Exchanges) on which the exchange contracts or commodity futures contracts will be traded will be the exchanges listed in ASC Order 91-501 *Recognition of Exchanges Located Outside Alberta for the Purposes of Trading in Exchange Contracts* and Schedule A of British Columbia Instrument 21-501 *Recognition of exchanges, self-regulatory bodies and jurisdictions*.
- 4.12 FCStone is required to adhere to CFTC regulations relating to an FCM, including the segregation and separate accounting of customer positions and monies. The CFTC regulations are designed to protect customers in the event of the insolvency or financial instability of a FCM. This protection will extend to Alberta, British Columbia and Saskatchewan clients of the Filers.

Decision

- 5. Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.
- 6. The decision of the Decision Makers under the Legislation is that the Registration Relief is granted provided that:
 - 6.1 any trade is part of the Derivatives Business and is only conducted on behalf of

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- 6.1.1 in Alberta and British Columbia, a Qualified Party, or
 - 6.1.2 in Saskatchewan, an Accredited Investor;
 - 6.2 all exchange-traded Derivatives are traded on a Recognized Exchange;
and
 - 6.3 FCStone maintains in good standing its registration as an FCM with the
CFTC and its membership with the NFA.
7. This decision will expire on October 31, 2007.

Glenda A. Campbell, Q.C., Vice-Chair
Alberta Securities Commission

Stephen R. Murison, Vice-Chair
Alberta Securities Commission

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Schedule A

Qualified Parties

1. The following parties, each acting as principal, except in respect of (BB) and (CC), in the transaction.

Banks

- (a) a bank to which the *Bank Act* (Canada) applies;
- (b) the Business Development Bank of Canada continued under the *Business Development Bank of Canada Act* (Canada);
- (c) a bank subject to the regulatory regime of a country that is a member of the Basle Accord (the Accord) or a country that is not an initial signatory to the Accord but has adopted the regulatory and supervisory rules set out in the Accord if the bank has a minimum paid up capital and surplus, as shown on the last audited balance sheet, in excess of \$100 million (or its equivalent in another currency);

Commercial User

- (d) a person or company that sells, buys, trades, produces, markets, brokers or otherwise uses in its business a commodity and as a consequence enters into an OTC derivative, a forward contract, a commodity contract, a futures contract and/or an option;

Credit Unions and Caisses Populaires

- (e) a credit union central or a federation of caisses populaires or any credit union or regional caisses populaire located, in each case, in Canada;

Loans and Trust Companies

- (f) a loan or trust corporation registered under the loan and trust corporations legislation of a province or territory of Canada or under the *Trust and Loan Companies Act* (Canada);
- (g) a loan or trust company subject to the regulatory regime of a country that is a member of the Accord or a country that is not an initial signatory to the Accord but has adopted the regulatory and supervisory rules set out in the Accord if the loan company or trust company has a minimum paid up capital and surplus, as shown on the last audited balance sheet, in excess of \$100 million (or its equivalent in another currency);

Insurance Companies

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- (h) an insurance company licensed to do business in Canada or a province or territory of Canada if the insurance company has a minimum paid up capital and surplus, as shown on the last audited balance sheet, in excess of \$100 million (or its equivalent in another currency);
- (i) an insurance company subject to the regulatory regime of a country that is a member of the Accord or a country that is not an initial signatory to the Accord but has adopted the regulatory and supervisory rules set out in the Accord if the insurance company has a minimum paid up capital and surplus, as shown on the last audited balance sheet, in excess of \$100 million (or its equivalent in another currency);

Sophisticated Entities

- (j) a person or company that
 - (i) together with its affiliates has entered into one or more transactions involving OTC derivatives, forward contracts, commodity contracts, futures contracts and/or options with counterparties that are not its affiliates, if
 - (A) the transaction had a total gross dollar value of or equivalent to at least \$1 billion; and
 - (B) any of the contracts relating to one of these transactions were outstanding on any day during the previous 15 month period, or
 - (ii) together with its affiliates had total gross market-to-market positions of or equivalent to at least \$100 million aggregated across counterparties, with counter-parties that are not its affiliates in one or more transactions involving OTC derivatives, forward contracts, commodity contracts, futures contracts and/or options on any day during the previous 15 month period;

Individuals

- (k) an individual who has a net worth of at least \$5 million (or its equivalent in another currency) excluding the value of his or her principal residence, and any holding company of which such individual owns all of the shares;

Government/Agencies

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- (l) Her Majesty in right of Canada or any province or territory of Canada and all crown corporations, instrumentalities and agencies of the Canadian federal or provincial or territorial governments;
- (m) a national government of a country that is a member of the Accord or a country that is not an initial signatory to the Accord but has adopted the regulatory and supervisory rules set out in the Accord and any instrumentality or agency of that government or corporation wholly-owned by that government.
- (n) a Canadian municipality with a population in excess of 50,000 and any Canadian provincial or territorial capital city;

Corporations and other Entities

- (o) a company, partnership, unincorporated association, organization or trust, other than an entity referred to in (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j) with total assets, as shown on the last audited balance sheet, in excess of \$25 million (or its equivalent in another currency);

Pension Plan or Fund

- (p) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial or territorial pension commission, if the pension fund has total net assets, as shown on the last audited balance sheet, in excess of \$50 million, provided that, in determining net assets, the liability of a fund for future pension payments shall not be included;
- (q) a mutual fund or non-redeemable investment fund if each investor in the fund is a Qualified Party;
- (r) a mutual fund if the investments of the fund are managed by a company that is registered under the securities legislation of a province or territory in Canada as a portfolio manager;
- (s) a non-redeemable investment fund if the person responsible for providing investment advice to the fund is registered under the securities legislation of a province or territory in Canada as an adviser, other than a securities adviser;

Brokers/Investment Dealers

- (t) a person or company registered under the securities legislation of a province or territory in Canada as a broker or an investment dealer or both;

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- (u) a person or company registered under the *Securities Act* (Ontario) as an international dealer if the person or company has total assets, as shown on its last audited balance sheet, in excess of \$10 million or its equivalent in another currency;
 - (v) a person or company whose account is fully managed by a registered portfolio manager or broker or investment dealer acting as a trustee or agent for such person or company;
 - (w) a direct or indirect wholly-owned subsidiary of any of the entities described in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (t) and (u);
 - (x) a holding body corporate of which any of the entities described in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (l), (m), (n), (o), (t) and (u) is a direct or indirect wholly-owned subsidiary;
 - (y) a direct or indirect wholly-owned subsidiary of a holding body corporate described in paragraph (x);
 - (z) a firm, partnership or joint venture or other form of unincorporated association in which one or more of the entities described in paragraphs (w), (x) or (y) have a direct or indirect controlling interest;
 - (aa) a party whose obligations in respect of OTC derivatives, forward contracts, commodity contracts, futures contracts and/or options for which the determination is made are fully guaranteed by another Qualified Party;
 - (bb) a portfolio manager or a financial intermediary referred to in paragraphs (a), (e), (f), (h), (l), (t) or (u) above, while acting as manager of accounts of a person, company, pension fund or pooled fund trust, which accounts are fully managed by such portfolio manager or financial intermediary; and
 - (cc) a broker or investment dealer acting as a trustee or agent for the person, company, pension fund or pooled fund trust.
2. A party is a Qualified Party for the purpose of any OTC derivative, futures contract, commodity contract, forward contract and/or an option if the party is a Qualified Party at the time the party purchases or sells the OTC derivative, futures contract, commodity contract, forward contract and/or option.

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3. All requirements contained in paragraph 1 that are based on the amounts shown on the balance sheet of an entity shall be determined by reference to the audited consolidated balance sheet of the entity for its most recently completed financial year.