

2005 BCSECCOM 590

September 9, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48 Dealer - Exemption from s. 34(1)(a) requirement to be registered as a dealer to trade securities and the obligations of dealers in Part 5 of the Act and rules - The person is registered or qualified as a dealer in the jurisdiction in which they reside and only trades securities listed or traded in that jurisdiction; the person has entered into a settlement agreement with the commission regarding trades conducted by the person without being registered in BC; the settlement agreement requires the person or an affiliate of the person to become registered in BC by a specific date; the person can conduct trades only for its existing BC clients until the person or its affiliate becomes registered in BC

Applicable British Columbia Provisions

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

In the Matter of
the Securities Legislation
of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New
Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador
and

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

In the Matter of optionsXpress, Inc.

MRRS Decision Document

Background

The local securities regulatory authority, regulator, or Autorité des marchés financiers (the Decision Maker) in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador (the Jurisdictions) has received an application from optionsXpress, Inc. (Options), pursuant to the securities legislation of the Jurisdictions (the Legislation) seeking relief in each Jurisdiction until December 31, 2005 from the dealer registration requirements contained in the Legislation, subject to terms and conditions, in respect of accounts (the Accounts) already opened by Options for certain residents of the Jurisdictions (the Existing Clients), pursuant to a settlement agreement made as of August 11, 2005

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(the Settlement Agreement) between Options and the securities regulatory authorities, as defined in National Instrument 14-101 Definitions (NI 14-101), in each of the Jurisdictions.

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission has acted as the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in NI 14-101 have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts represented by Options and Options Canada (as defined below):

1. Options is a corporation incorporated under the laws of Delaware and is registered as a broker-dealer with the United States (U.S.) Securities and Exchange Commission in each of the U.S. states. Options is also a member firm of the National Association of Securities Dealers, Inc., and a member of the Chicago Board Options Exchange, the International Securities Exchange, and the Boston Options Exchange.
2. In late 2000, Options began operations as a web-based Internet securities firm from its principal office in Chicago, Illinois.
3. In early 2001, Options started to trade U.S. securities on behalf of the Existing Clients without being registered in the Jurisdictions.
4. Residents in the Jurisdictions could log on to the Options website and open an Options account to execute on-line trades of securities listed or traded in the U.S.
5. Options is not registered in any capacity in any of the Jurisdictions.
6. In May 2004, as a result of regulatory inquiries by the securities regulatory authorities, Options stopped opening new client accounts for residents in the Jurisdictions.
7. Subsection 213(1) of Ontario Regulation 1015 and its equivalent in most of the Jurisdictions requires that a registered dealer that is not an individual

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must be a company incorporated, or a person formed or created, under the laws of Canada or a province or territory of Canada. Being incorporated under the laws of Delaware, Options is ineligible to be registered as a dealer in the Jurisdictions.

8. Options' affiliate, optionsXpress Canada Corp./Corporation optionsXpress Canada (Options Canada), a corporation incorporated under the laws of Nova Scotia, will fulfill Options' obligations pursuant to the Settlement Agreement as described in paragraph 9 below.
9. Pursuant to the terms of the Settlement Agreement, Options undertakes that Options Canada will, on a non-resident basis:
 - (i) seek diligently
 - (a) registration in the Jurisdictions as a dealer in the category of investment dealer or equivalent; and
 - (b) membership with the Investment Dealers Association of Canada; and
 - (ii) cooperate fully with the securities regulatory authorities in each Jurisdiction.
10. Pursuant to the terms of the Settlement Agreement, Options undertakes that from the date of this decision to and including the date that Options Canada obtains registration as a dealer in the category of investment dealer or equivalent in each Jurisdiction, at which time Options will transfer all Accounts to Options Canada, and subject to the applicable dealer registration exemptions with respect to the Existing Clients, it will:
 - (i) make or ensure that it has made such enquiries about each Existing Client of Options as enable Options to establish the identity and the creditworthiness of each Existing Client, and the reputation of the Existing Client if information known to Options causes doubt as to whether the Existing Client is of good reputation, although Options is not required to make enquiries as to the creditworthiness of an Existing Client if Options is not financing the acquisition of securities by the Existing Client;
 - (ii) cooperate fully with the securities regulatory authorities in each Jurisdiction and comply with all requirements in the Legislation in a manner equivalent to that required of a dealer registered in the

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category of investment dealer or equivalent in each Jurisdiction to the greatest possible extent; and

- (iii) not open any new client accounts on behalf of residents of the Jurisdictions.

11. As part of the Settlement Agreement, staff of the securities regulatory authorities have agreed:

- (i) to recommend that the Decision Makers grant Options an exemption from the dealer registration requirements of the Legislation, in respect of Options' Existing Clients only, until December 31, 2005, so that Options Canada can become registered in the Jurisdictions as a dealer in the category of investment dealer or equivalent;
- (ii) not to oppose a future application by Options to extend the decision granted hereby, as reasonably required, to complete the dealer registration process provided that Options Canada has diligently been seeking registration in the Jurisdictions as a dealer in the category of investment dealer or equivalent.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make this decision has been met.

The decision of the Decision Makers under the Legislation is that Options is exempt from the dealer registration requirements of the Legislation, in respect of the Existing Clients only, until December 31, 2005, provided that Options does not open any new client accounts on behalf of residents of the Jurisdictions.

Paul M. Moore
Commissioner
Ontario Securities Commission

Robert W. Davis
Commissioner
Ontario Securities Commission

David L. Knight
Commissioner
Ontario Securities Commission