

2002 BCSECCOM 239

ORDER UNDER SECTION 48 OF THE SECURITIES ACT, R.S.B.C. 1996, c. 418

FLEMING ASSET MANAGEMENT (CANADA) INC.

Background

[para 1]

Fleming applied for an exemption from the adviser registration requirements in section 34(1)(c) of the Act for certain foreign portfolio managers (the Advisers);

Representations

[para 2]

Fleming represents that:

1. it is an indirect subsidiary of J.P. Morgan Chase & Co., and is incorporated under the laws of Canada with its head office in British Columbia;
2. it is not a reporting issuer under the Act;
3. it is registered under the Act and the applicable securities legislation in most jurisdictions in Canada as an adviser in the categories of investment counsel and portfolio manager, or in a comparable capacity;
4. each of the Advisers is, or will be, registered as an adviser, or will be licensed or otherwise legally qualified to provide investment counselling and portfolio management services under the laws in the jurisdiction where the Adviser resides, but may not be registered as an adviser under the Act;
5. Fleming and its Advisers intend to offer investment counselling and portfolio management services to clients resident in British Columbia (the Participating Clients), directly or indirectly, including as a sub-adviser to certain funds organized by Fleming;
6. each Participating Client will enter into a written agreement with Fleming that provides Fleming with discretionary authority to purchase and sell securities on behalf of the client and which authorizes or requires Fleming to delegate its discretionary authority over all or a portion of the client's assets to one or more of the Advisers;

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7. the obligations and duties of the Advisers are, or will be, set out in a written agreement between the Adviser and Fleming;
8. Fleming will agree with its Participating Clients to be responsible for any loss that arises out of the failure of the Advisers to:
 - (a) exercise their powers and discharge their duties honestly, in good faith and in the best interests of Fleming and each Participating Client; or
 - (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;
9. an Adviser that provides investment counselling or portfolio management services to a Participating Client would be considered to be acting as an “adviser” within the meaning of the Act and in the absence of the requested relief, would be required to be registered, or otherwise exempt from registration, as an adviser under the Act; and
10. there are no adviser registration exemptions under the Act that the Advisers can rely on to provide investment counselling and portfolio management services to Participating Clients;

Order

[para 3]

Because it is not prejudicial to the public interest, the Executive Director orders under section 48 of the Act that the Advisers are exempt from the requirements of section 34(1)(c) of the Act for investment counselling and portfolio management services provided to Participating Clients, provided that:

- (a) the obligations and duties of the Advisers are set out in a written agreement between the Adviser and Fleming;
- (b) the agreement between Fleming and each Participating Client provides that Fleming will be responsible for any loss that arises out of the failure of the Advisers as set out in paragraph 8 above;
- (c) Fleming cannot be relieved by a Participating Client from the responsibility for loss under paragraph (b); and
- (d) the Advisers are registered as advisers, or are licensed or otherwise legally qualified to provide investment counselling or portfolio management services in the jurisdiction where they reside.

[para 4]

March 19, 2002

Derek E. Patterson