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Headnote

1996 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 - 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; the person will only trade exchange contracts with "accredited investors"; the person is not conducting advising activities for the exchange contracts.

Exemption Order

**Bear, Stearns & Co. Inc., Bear, Stearns Securities Corp. and
Bear, Stearns International Limited**

Sections 48 and 171 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 Bear, Stearns & Co. Inc. (BS&Co), Bear, Stearns Securities Corp. (BSSC) and Bear, Stearns International Limited (BSIL) (together, the Applicants) applied for
- (a) an order revoking a previous decision of the Executive Director granted to BS&Co dated October 7, 2004 (the 2004 order); and
 - (b) an exemption from the requirement in section 34(1)(a) of the Act to be registered as a dealer (the registration requirement) in order to trade in exchange contracts on markets located outside of Canada, on behalf of clients in British Columbia (the clients).

Representations

- ¶ 2 The Applicants represent that:
- 1. the head offices of BS&Co and BSSC are located in New York, New York;
 - 2. the head office of BSIL is located in London, United Kingdom;
 - 3. BS&Co is registered with the United States Securities and Exchange Commission (SEC) and the National Association of Securities Dealers (NASD);

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4. BS&Co is registered with the Commodity Futures Trading Commission (CFTC) as a futures commission merchant (FCM) and is a member of the National Futures Association (NFA);
5. BSSC is registered with the SEC and NASD;
6. BSSC is registered with the CFTC as a FCM and is a member of the NFA;
7. BSIL is authorised as a dealer with the United Kingdom Financial Services Authority (FSA);
8. each Applicant will advise each of its clients that:
 - (a) it is not registered as a dealer under the Act; and
 - (b) the clients may not have the same protection that they otherwise might have if it were registered as a dealer under the Act;
9. the Applicants will not
 - (a) maintain an office or sales force in British Columbia; or
 - (b) provide securities advice to the clients, and do not intend to act as advisers to the clients;
10. in providing trading and brokerage services to the clients, the Applicants would be considered to be acting as dealers under the Act and without this order would be required to be registered or otherwise exempt from registration, as dealers under the Act;
11. the Applicants could rely on the “accredited investor” dealer registration exemption available in Part 2 of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) in connection with their securities trading activities in British Columbia;
12. exchange contracts are separately regulated in British Columbia and there are no statutory exemptions from the registration requirement that the Applicants could rely on to provide trading and brokerage services to the clients with respect to exchange contracts;
13. under the 2004 order, the Executive Director exempted BS&Co from the dealer registration requirement for trading in exchange contracts for clients under certain conditions, including limiting the number of clients to five in any 12 month period; and

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14. BS&Co would like to remove the limitation on the number of clients in accordance with more recent orders granted by the Executive Director.

Order

¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders

1. under section 171 of the Act that the 2004 order is revoked;
2. under section 48 of the Act that the Applicants are exempt from the registration requirement for trading in exchange contracts on behalf of clients provided that:
 - (a) each client purchases the exchange contract as principal and is an accredited investor as that phrase is defined in NI 45-106; and
 - (b) the Applicants maintain their respective registrations with the United States Securities and Exchange Commission, the National Association of Securities Dealers, the Commodity Futures Trading Commission, the National Futures Association and the Financial Services Authority, as applicable.

¶ 4 November 8, 2005

Sandy Jakab
Manager