

2012 BCSECCOM 358

September 6, 2012

Headnote

Multilateral Instrument 11-102 – *Passport System* – Securities Act s. 48 Adviser – Exemption from s. 34(b) requirement to be registered as an adviser – A person who resides outside of BC wants to advise BC residents – The person is hired under a written agreement with a BC registered dealer or adviser to provide advice to the BC registrant; the person is registered or qualified to provide the advice in the jurisdiction in which they reside; under a written agreement with its BC clients or the person, the BC registrant accepts responsibility for all losses resulting from inappropriate advice provided by the person.

Applicable British Columbia Provisions

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

In the Matter of
the Securities Legislation of
British Columbia (the Jurisdiction)

and

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

and

In the Matter of
GE Asset Management Canada Company (the Filer)

Decision

Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the Legislation) that the adviser registration requirement does not apply to certain advisers who act as sub-advisers to the Filer (Sub-Advisers) by providing investment counseling and portfolio management services for the benefit of certain clients of the Filer (Clients) (the Requested Relief).

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

2012 BCSECCOM 358

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut (together with the Jurisdiction, the Filing Jurisdictions).

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. The Filer is registered under securities legislation in each of the jurisdictions of Canada in the categories of portfolio manager and exempt market dealer, and in Québec in the category of investment fund manager. The Filer is an unlimited company organized under the *Companies Act* (Nova Scotia), has its head office in Montreal, Québec and is not in default of securities legislation in any of the jurisdictions of Canada.
 2. While the Autorité des marchés financiers is ordinarily the principal regulator for the Filer, exemptive relief is not required in Québec due to the application of the general registration exemption order (Decision No. 2009-PDG-0191) (Québec Exemption). The jurisdiction with which the Filer has the most significant connection outside of Québec is Ontario, however exemptive relief is not needed there due to the application of section 7.3 of Ontario Securities Commission Rule 35-502 – *Non-Resident Advisers* (OSC Rule 35-502). Therefore, the British Columbia Securities Commission has been chosen as the principal regulator for this application on the basis that the Jurisdiction is the jurisdiction in which the Filer is seeking exemptive relief and with which the Filer has the most significant connection outside of Québec and Ontario.
 3. The Filer manages approximately \$3.6 billion in assets for its Canadian clients and the Filer and its parent have actively marketed various investment strategies in Canada since 1993.
 4. The Filer intends to use investment counseling and portfolio management services of Sub-Advisers for the benefit of Clients who wish to have exposure to portfolio management services in which Sub-Advisers have experience and

2012 BCSECCOM 358

expertise. Clients will be resident in the Filing Jurisdictions in which the Filer is registered as an adviser in the category of portfolio manager.

5. Each Sub-Adviser is or will be registered or otherwise qualified under applicable laws in the foreign jurisdiction where its head office is located to provide investment counseling and portfolio management services. The Sub-Advisers will not be residents of Canada.
6. Each of the Sub-Advisers is, and will be, an affiliate of the Filer. For this purpose, an “affiliate” means any entity that is controlled by GE Asset Management Incorporated, or other ultimate parent company of the Filer, as the case may be, and “control” and any derivation thereof, means the possession, directly or indirectly, of the power to direct or significantly influence the management and policies/business or affairs of an entity whether through ownership of voting securities or otherwise.
7. The Filer will enter into a written investment management agreement or similar agreement (an IMA) with each Client that:
 - (a) provides the Filer with discretionary authority to purchase and sell securities on behalf of the Client subject to agreed upon investment constraints and parameters between the Filer and the Client; and
 - (b) authorizes the Filer to delegate its discretionary authority over all or a portion of the Client’s assets to one or more Sub-Advisers.
8. The Filer will agree under the IMA to be responsible to each Client for any loss arising out of the failure of a Sub-Adviser:
 - (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Filer and the Client for whose benefit the investment advice is, or portfolio management services are, to be provided; or
 - (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances

(together, the Assumed Liabilities),

and will acknowledge that it cannot be relieved by Clients from this responsibility.

2012 BCSECCOM 358

9. The Filer will be responsible for providing Clients with all applicable reports and statements required under the Legislation or IMA.
10. The Filer will enter into an agreement with each Sub-Adviser which will set out the obligations and duties of each party in connection with investment counseling and portfolio management services provided to each Client and under which the Sub-Adviser will agree to act as a sub-adviser to the Filer for the benefit of Clients.
11. If there is any direct contact between a Sub-Adviser and a Client in connection with the provision of investment counseling and portfolio management services, an advising representative of the Filer registered in the Filing Jurisdiction where the Client is resident, will be present at all times, either in person or by telephone.
12. The Filer has made or will make enquiries with respect to each Client to determine the investment objectives and strategies of the Client and the suitability of proposed transactions for the Client, and to otherwise comply with the “know your client” and “suitability” obligations as may be required under the Legislation. The Filer will provide this information to a Sub-Adviser if it exercises discretionary authority over the assets of a Client.
13. Each Sub-Adviser who provides investment counselling and portfolio management services with respect to the assets of Clients would be considered to be acting as an “adviser” within the meaning of the Legislation, and in the absence of the Requested Relief, would be required to register as an adviser under the Legislation, unless otherwise exempt.
14. There are no exemptions from the requirement to register as an adviser that Sub-Advisers may rely on to provide investment counselling and portfolio management services to Clients in the Filing Jurisdictions.
15. The Sub-Advisers who are not otherwise registered in Québec are not required to register as advisers under the *Securities Act* (Québec) as they are able to rely on the Québec Exemption.
16. The Sub-Advisers who are not otherwise registered in Ontario will not be required to register as advisers under the *Securities Act* (Ontario) as they are able to rely on the exemption from registration in section 7.3 of OSC Rule 35-502.

Decision

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Requested Relief is granted, provided that:

- (a) the Filer is registered in good standing under the Legislation as a portfolio manager or otherwise in a category which permits the Filer to provide the investment counseling and portfolio management services to Clients;
- (b) in obtaining investment counseling and portfolio management services from each Sub-Adviser, the Filer enters into a written agreement with that Sub-Adviser which sets out the Sub-Adviser's duties and responsibilities;
- (c) pursuant to the IMA, the Filer is fully responsible to the Clients for any losses arising out of the Assumed Liabilities and the Filer cannot be relieved of such responsibility;
- (d) if there is any direct contact between a Sub-Adviser and a Client in connection with the provision of investment counseling and portfolio management services, an advising representative of the Filer registered in the Filing Jurisdiction where the Client is resident, will be present at all times, either in person or by telephone;
- (e) each Sub-Adviser is registered or otherwise legally permitted to provide investment counseling and portfolio management services under the applicable laws of the foreign jurisdiction in which its head office is located; and

for each of the Filing Jurisdictions, this decision will terminate 90 days after the coming into force of any rule, regulation, blanket order or ruling under the securities legislation of such Filing Jurisdiction that provides an equivalent exemption to Sub-Advisers.

Sandra Jakab
Director, Capital Markets Regulation
British Columbia