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Headnote

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 hired under a written agreement with a BC registered dealer or adviser to provide advice to the BC clients; 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.

Exemption Order

Merrill Lynch, Pierce, Fenner & Smith Incorporated

Section 48 of the Securities Act, R.S.B.C. 1996, c.418

Background

- ¶ 1 Merrill Lynch, Pierce, Fenner & Smith Incorporated (Merrill Lynch) applied for an exemption from the adviser registration requirement in section 34(1)(c) of the Act (the adviser registration requirement) to permit certain portfolio managers (the Sub-advisers) to provide portfolio management services for the benefit of Merrill Lynch's clients who are resident in British Columbia (the Clients) and participating in the Merrill Lynch Consults ® Service program (the Program).

Representations

- ¶ 2 Merrill Lynch represents that:
1. it is a corporation formed under the laws of the State of Delaware with its head office in New York, New York;
 2. it is registered under the Act as an adviser in the category of Portfolio Manager and Investment Counsel (Securities and Exchange Contracts);
 3. it is also registered as:
 - (a) an international dealer and international adviser (investment counsel and portfolio manager) in Ontario; and
 - (b) a broker-dealer and an investment adviser with the United States Securities and Exchange Commission;

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4. the Sub-advisers are registered or otherwise qualified under applicable laws in the United States or in a jurisdiction where the Sub-adviser's head office is located to provide investment counselling or portfolio management services;
5. each Sub-adviser will exercise discretionary authority over a portion of the assets of Clients who wish to have exposure to particular jurisdictions, industries or types of securities in which the Sub-adviser has experience and expertise; and
6. there are no adviser registration exemptions that the Sub-advisers can rely on to provide investment counselling and portfolio management services to Clients.

Order

- ¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders under section 48 of the Act that the Sub-advisers are exempt from the adviser registration requirement for investment counselling and portfolio management services provided to Clients participating in the Program, provided that Merrill Lynch:
1. enters into (or has entered into) an agreement with each Sub-adviser setting out the terms and conditions governing the relationship between Merrill Lynch, the Sub-adviser and the Clients and the rights, obligations and duties of the parties;
 2. contractually agrees with the Clients to be responsible for any loss that arises out of the failure of a Sub-adviser to;
 - (a) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of Merrill Lynch and the Clients for whose benefit the investment advice is, or portfolio management services are, to be provided, and
 - (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances and this responsibility cannot be waived.

¶ 4 May 20, 2004

Susan Toews
Acting Manager