

# 2005 BCSECCOM 451

## Headnote

1996 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 registered or qualified to provide the advice in the jurisdiction in which they reside or carry on business; the person will only advise a small number of BC clients; the person will not carry on any other business in BC; the BC clients are sophisticated and have a high net worth; the clients are aware that the person is not registered in BC and the consequences.

## Exemption Order

### JML Portfolio Management Ltd.

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

## Background

- ¶ 1 JML Portfolio Management Ltd. (JML) applied for an exemption from the requirement in section 34(1)(c) of the Act to be registered as an adviser (the adviser registration requirement) in order to provide securities advice in connection with Swiss annuity contracts to certain individuals resident in British Columbia.

## Representations

- ¶ 2 JML represents that:
1. JML is a corporation organized under the laws of Switzerland; JML Jürg M. Lattman Holding AG is the ultimate parent company of the Applicant and the companies in the JML group of companies (the JML Group);
  2. JML is currently registered in good standing as an investment adviser with the United States Securities and Exchange Commission under the U.S. *Investment Advisers Act of 1940*;
  3. JML is registered under the Act as a non-resident adviser and is not registered under securities legislation in any other Canadian jurisdiction;
  4. the JML Group provides portfolio management and investment advisory services to sophisticated, high net worth individuals;

## **2005 BCSECCOM 451**

5. the JML Group has carried on investment management business since 1974 and as of December 31, 2004, had assets under management of over USD\$300 million;
6. JML serves eight clients who are resident in British Columbia (the Existing Clients); the Existing Clients have purchased variable annuity contracts issued by insurance companies based in Switzerland (the Annuity Contracts); JML provides limited ongoing advice to the Existing Clients in connection with the Annuity Contracts; otherwise, it does not provide advice to the Existing Clients or to any other persons resident in British Columbia and does not intend to solicit new clients resident in British Columbia;
7. JML has determined that the limited nature of its activities in British Columbia no longer justifies the expenses associated with maintaining its registration in British Columbia, and it intends to surrender its registration under the Act;
8. JML intends will provide ongoing advice to the Existing Clients in connection with the Annuity Contracts held by the Existing Clients;
9. the Annuity Contracts held by the Existing Clients are “securities” within the meaning of the Act;
10. in providing advice to the Existing Clients in connection with the Annuity Contracts, JML acts as an adviser under the Act; without the relief requested by this application, JML would be required to be registered, or otherwise exempt from registration, as an adviser under the Act;
11. there are no exemptions from the adviser registration requirement in the Act that JML can rely on to provide advice to the Existing Clients in connection with the Annuity Contracts;
12. JML does not:
  - (a) maintain an office or sales force in British Columbia;
  - (b) have any clients other than the Existing Clients resident in British Columbia; or
  - (c) intend to actively solicit other clients resident in British Columbia;
13. JML will advise the Existing Clients that:
  - (a) JML is not currently registered to advise under the Act;

## 2005 BCSECCOM 451

- (b) JML may not have the same proficiency requirements as persons registered under the Act; and
- (c) the Existing Clients may not have the same protection they would otherwise have if JML were registered in British Columbia.

### Order

¶ 3 Because it is not prejudicial to the public interest, the Commission orders under section 48 of the Act that JML is exempt from the requirements of section 34(1)(c) of the Act for advice provided to the Existing Clients, provided that JML maintains its registration as an investment adviser under the U.S. *Investment Advisers Act of 1940* in good standing.

¶ 4 June 30, 2005

Sandy Jakab  
Manager