

2009 BCSECCOM 451

Headnote

Securities Act s. 48 Adviser - Exemption from s.34(1)(c) requirement to be registered as an adviser - 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

Aberdeen Fund Management Limited

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

Background

- ¶ 1 Aberdeen Fund Management Limited (Aberdeen) applied for an exemption from the adviser registration requirement under section 34(1)(c) of the Act (the adviser registration requirement) in order to provide discretionary portfolio management services to one prospective sophisticated client resident in British Columbia, the British Columbia Investment Management Corporation (bcIMC).

Representations

- ¶ 2 Aberdeen represents that:
1. it is a corporation organized under the laws of the United Kingdom, and has its principal office and place of business in the United Kingdom;
 2. it provides investment counselling and discretionary portfolio management services;
 3. its clients include public funds, corporate pensions, endowments and foundations;
 4. it is authorised and regulated by the Financial Services Authority in the United Kingdom (the FSA);
 5. it has carried on business in the United Kingdom since 1985;
 6. as of March 31, 2009, it has aggregate funds under management in excess of GBP 20 billion;

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7. it intends to provide securities advice to bcIMC;
8. it intends to manage an emerging market equities mandate for bcIMC through discretionary authority granted by bcIMC;
9. bcIMC is:
 - (a) a crown corporation, incorporated under the *Public Sector Pension Plans Act* (BC);
 - (b) an "accredited investor" as defined in National Instrument 45-106 – *Prospectus and Registration Exemptions* (NI 45-106); and
 - (c) has professional advisers;
10. it will advise bcIMC that:
 - (a) it is not registered as an adviser under the Act;
 - (b) it may not have the same proficiency requirements as other persons registered under the Act;
 - (c) bcIMC may not have the same protection that it would otherwise have if it were registered as an adviser under the Act;
11. it does not:
 - (a) maintain an office or sales force in British Columbia;
 - (b) currently have any clients in British Columbia; or
 - (c) intend to solicit other clients in British Columbia;
12. by providing portfolio management services to bcIMC, it would be considered to be acting as an adviser under the Act and without this order would be required to be registered, or otherwise be exempt from registration, as an adviser under the Act; and
13. there are no exemptions from the adviser registration requirement that Aberdeen can rely on to provide securities advice to bcIMC.

Order

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¶ 3 Considering that it is not prejudicial to the public interest, the Executive Director orders under Section 48 of the Act that Aberdeen is exempt from the adviser registration requirement for securities advice provided to bcIMC, provided that:

1. Aberdeen maintains in good standing its authorization with the FSA to advise on and manage investments; and
2. bcIMC is an accredited investor as defined in NI 45-106.

¶ 4 June 9, 2009

J. Douglas MacKay
Acting Director, Capital Markets Regulation