

2007 BCSECCOM 673

November 2, 2007

Headnote

Mutual Reliance Review System for Exemption Relief Application – Securities Act s. 48 - Exemption from s.34(1)(a) requirement to be registered as a dealer to trade securities - 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 or carry on business; the person will only trade exchange contracts with “accredited investors”; the person is not providing advice or only providing advice as incidental to the trades.

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 advice is solely incidental to dealing activities for which the person has an exemption from registration.

Applicable British Columbia Provisions

Securities Act, RSBC 1996, c. 418, ss. 34(1)(a) and (c) and 48

**In the Matter of
the Securities Legislation
of Alberta and British Columbia
(the Jurisdictions)**

and

**In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications**

and

**In the Matter of FCStone, LLC,
FCStone Trading, LLC and FCStone Forex, LLC
(the Filers)**

MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from the Filers for a decision

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under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filers from the following requirements:

- (a) the requirement to be registered as a dealer with respect to certain trades and activities of the Filers in connection with their intended Derivatives Business (as defined below); and
- (b) the requirement to be registered as an adviser for advice which is provided solely incidental to the Filers' Derivatives Business.

(collectively, the **Registration Relief**).

¶ 2 Under the System:

- (a) the Alberta Securities Commission (the **ASC**) is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

¶ 3 Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

¶ 4 This decision is based on the following facts represented by the Filers:

- (a) FCStone Group, Inc. (**FCStone Group**):
 - (i) is a corporation incorporated under the laws of Delaware;
 - (ii) was organized for the direct benefit of local farmer-owned organizations with the purpose of providing education, services and products with respect to hedging and risk management products involving commodities; and
 - (iii) is currently a public corporation which is listed on the NASDAQ under the ticker symbol FCSX.
- (b) FCStone, LLC (**FCStone**) is:
 - (i) a limited-liability company incorporated under the laws of the State of Iowa;

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- (ii) a wholly-owned subsidiary of FCStone Group;
 - (iii) registered as a futures commission merchant (**FCM**) with the United States Commodity Futures Trading Commission (**CFTC**);
 - (iv) a member of the National Futures Association (**NFA**);
 - (v) authorized to carry out a full range of futures business activities with commercial, individual and institutional clients in the United States; and
 - (vi) a direct member of all major futures exchanges in the United States and of Eurex, with its designated self-regulatory organization being the Chicago Mercantile Exchange.
- (c) FCStone is not registered under the securities legislation or the commodity futures legislation of any province or territory of Canada. FCStone is unable to be registered as a dealer in the Jurisdictions because there is no available registration category for foreign dealers.
- (d) FCStone Trading, LLC (**FCStone Trading**) is:
- (i) a limited-liability company incorporated under the laws of the State of Iowa;
 - (ii) a wholly-owned subsidiary of FCStone Group; and
 - (iii) primarily involved in the business of entering into over-the-counter (**OTC**) transactions in the capacity of a principal.
- (e) FCStone Forex, LLC (**FCStone Forex**):
- (i) is a limited-liability company incorporated under the laws of the State of Iowa;
 - (ii) is a wholly-owned subsidiary of FCStone Group; and
 - (iii) primarily acts as a retail foreign currency dealer for FCStone Group's clients.
- (f) The Filers wish to offer the following services (collectively, the **Derivatives Business**) with respect to exchange contracts, commodity

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futures contracts, commodity futures options, foreign exchange contracts and OTC derivatives (collectively, **Derivatives**) to clients in the Jurisdictions:

- (i) targeted marketing of services, including visiting prospective clients in the Jurisdictions to discuss the markets, risk management strategies and opportunities applicable to Derivatives, and to promote the Filers' Derivative services;
 - (ii) providing short-term and long-term market commentary and research reports for clients applicable to the Derivatives;
 - (iii) receiving client orders by telephone and entering them on Recognized Exchanges (as defined below);
 - (iv) entering into transactions involving Derivatives with clients;
 - (v) installing software in computer terminals located in a client's premises or offering a secure, password-protected internet site to give the client access to live market data and the ability to electronically execute orders involving Derivatives, including those on Recognized Exchanges that either only trade electronically or require a significant portion of their business to be traded electronically;
 - (vi) clearing clients' Derivatives transactions on any Recognized Exchanges on which FCStone has a clearing membership or other clearing relationship;
 - (vii) providing live operational information to clients by a password-protected secure web-based service, allowing clients to view their positions relating to their Derivatives, including margin commitments, order limits and other useful account information; and
 - (viii) such other direct or indirect acts, solicitations, conduct and negotiations as may be ancillary to any of the above.
- (g) FCStone Trading is able to enter into OTC transactions in Alberta and British Columbia in reliance on available exemptions in ASC Order 91-502 Over-the-Counter Derivatives Transactions and Commodity Products (**ASC 91-502**) and British Columbia Instrument 91-501 Over-

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the-Counter Derivatives (**BC 91-501**) on behalf of clients who are **Qualified Parties** as defined in ASC 91-502 or BC 91-501, respectively.

- (h) The Filers will restrict their Derivatives Business activities in the Jurisdictions to trading, and providing ancillary advice relating to, Derivatives for Qualified Parties.
- (i) The Filers will attorn to the jurisdiction of the courts of each Jurisdiction and will appoint an agent for service in each Jurisdiction.
- (j) The Filers will not advertise their services by television, radio, newspaper, internet or other media of circulation that originate in Canada, other than industry publications.
- (k) The exchanges (**Recognized Exchanges**) on which the exchange contracts or commodity futures contracts will be traded will be the exchanges listed in ASC Order 91-501 Recognition of Exchanges Located Outside Alberta for the Purposes of Trading in Exchange Contracts and Schedule A of British Columbia Instrument 21-501 Recognition of exchanges, self-regulatory bodies and jurisdictions.
- (l) FCStone is required to adhere to CFTC regulations relating to an FCM, including the segregation and separate accounting of customer positions and monies. The CFTC regulations are designed to protect customers in the event of the insolvency or financial instability of an FCM. This protection will extend to Alberta and British Columbia clients of the Filers.

Decision

- ¶ 5 Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.
- ¶ 6 The decision of the Decision Makers under the Legislation is that the Registration Relief is granted provided that:
 - (a) any trade is part of the Derivatives Business and is only conducted on behalf of a Qualified Party in Alberta and British Columbia;
 - (b) all exchange-traded Derivatives are traded on a Recognized Exchange;
 - (c) FCStone maintains in good standing its registration as an FCM with the CFTC and its membership with the NFA; and

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- (d) the Filers provide the following disclosure to each client when opening that client's account:
- (i) a statement that there may be difficulty in enforcing any legal rights against the Filers or any of their directors, officers, employees or agents, because they are resident outside of the Jurisdictions and all or substantially all of their assets are situated outside of the Jurisdictions;
 - (ii) a statement that the Filers are not registered under the Legislation and, accordingly, the protection available to clients of a dealer registered under the Legislation will not be available to clients of the Filers;
 - (iii) the name and address of the agent for service in the Jurisdiction, as applicable; and
 - (iv) a risk disclosure statement providing substantially similar disclosure to that required under the Legislation for registered dealers trading in exchange contracts.

"original signed by"
Glenda A. Campbell, QC
Alberta Securities Commission

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Stephen R. Murison
Alberta Securities Commission