

# 2005 BCSECCOM 317

## Headnote

1996 Securities Act s. 48 Dealer - Exemption from s.34(1)(a) requirement to be registered as a dealer to trade securities and the obligations of dealers in Part 5 of the Act and rules - 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; the person will only trade exchange contracts with “accredited investors”; the person is not conducting advising activities for the exchange contracts.

## Exemption Order

### Merrill Lynch International

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

## Background

- ¶ 1 Merrill Lynch International (MLI) applied for an exemption from the requirement in section 34(1)(a) of the Act to be registered as a dealer (the registration requirement), in order to trade in exchange contracts on markets located outside of Canada, on behalf of clients in British Columbia (the clients).

## Representations

- ¶ 2 MLI represents that:
1. it is formed under the laws of England and Wales and its head office is located in London, United Kingdom;
  2. it is authorised as a dealer with the United Kingdom Financial Services Authority (FSA);
  3. it has carried on the business of a dealer in the United Kingdom since 1996;
  4. it intends to trade in exchange contracts on markets located outside of Canada, on behalf of the clients, who will be accredited investors, as that term is defined in Section 1.1 of Multilateral Instrument 45-103 *Capital Raising Exemptions* (MI 45-103);
  5. it will inform each of the clients that:
    - (a) it is not registered as a dealer under the Act; and

## 2005 BCSECCOM 317

- (b) the clients may not have the same protection that they otherwise might have if MLI were registered as a dealer under the Act;
- 6. it will not:
  - (a) maintain an office or sales force in British Columbia; or
  - (b) provide securities advice to the clients, and does not intend to act as an adviser to the clients;
- 7. in providing trading and brokerage services to the clients, MLI would be considered to be acting as a dealer under the Act and without this order would be required to be registered, or otherwise exempt from registration, as a dealer under the Act; and
- 8. it could rely on MI 45-103 in connection with its securities dealing activities in British Columbia; however, securities and exchange contracts are separately regulated and there are no exemptions from the registration requirement that MLI could rely on to provide trading and brokerage services to the clients with respect to exchange contracts.

### **Order**

¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders under section 48 of the Act that MLI is exempt from the registration requirement for trading in exchange contracts on behalf of the clients provided that:

- 1. each client purchases the security as principal and is an accredited investor as that term is defined in MI 45-103; and
- 2. MLI maintains its registration as a dealer with the FSA.

¶ 4 May 13, 2005

L.E. Evans, C.A.  
Director