

2003 BCSECCOM 414

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 registered or qualified to provide the advice in the jurisdiction in which they reside; the person will only advise one BC client or a small group of BC related clients; the person will not carry on any other business in BC; the BC clients manage a fund or limited partnership, the units of which are offered under a prospectus with a minimum offering of no less than \$5,000,000; the clients are aware that the person is not registered in BC and the consequences.

Exemption Order

Mavrix Fund Management Inc.

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

Background

- ¶ 1 Mavrix 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, including portfolio management services (securities advice), to certain persons resident or otherwise located in British Columbia.

Representations

- ¶ 2 Mavrix represents that:
1. it was incorporated under the laws of Ontario and its head office is in Ontario;
 2. it is registered under the *Securities Act* (Ontario) as an adviser in the categories of investment counsel and portfolio manager, and as a dealer in the category of limited market dealer;
 3. it is the trustee and manager of the eleven Mavrix Mutual Funds and Mavrix Strategic Small Cap Fund (formerly Mavrix Emerging Companies Fund), and provides investment advice, including portfolio management services, to those funds;
 4. its individual advisers are Malvin C. Spooner, William Shaw and Raymond M. Steele, each of whom is an officer and director of Mavrix, and is registered under the *Securities Act* (Ontario) as an adviser in the categories of investment counsel and portfolio manager;

2003 BCSECCOM 414

5. it provides securities advice to Contrarian Resource Fund 2002 Management Limited and Contrarian Resource Fund 2003 Management Limited (the present Contrarian managers), which are companies incorporated under the laws of British Columbia and are the general partners of Contrarian Resource Fund 2002 Limited Partnership and Contrarian Resource Fund 2003 Limited Partnership;
6. it is exempt from the adviser registration requirement to provide advice to the present Contrarian managers under exemption orders 2002 BCSECCOM 930 and 2003 BCSECCOM 327 that were granted on November 13, 2002 and May 15, 2003 by the Executive Director of the British Columbia Securities Commission;
7. it intends to provide securities advice to future managers of Contrarian resource funds and limited partnerships, and will only advise a future Contrarian manager that manages a fund or limited partnership, the units of which are offered under a prospectus with a minimum offering of no less than \$5,000,000 (the future Contrarian managers);
8. prior to being hired to provide securities advice to a future Contrarian manager, Mavrix will advise the future Contrarian manager that:
 - (a) Mavrix is not registered as an adviser under the Act;
 - (b) Mavrix may not be subject to the same proficiency requirements as other persons registered under the Act; and
 - (c) the future Contrarian manager may not have the same protections that it would have if Mavrix were registered as an adviser under the Act;
9. it does not:
 - (a) maintain offices or a sales force within British Columbia;
 - (b) have any other clients resident in British Columbia, other than the present Contrarian managers; or
 - (c) intend to actively solicit other clients within British Columbia;
10. there are no exemptions from the adviser registration requirement that it can rely on to provide the securities advice to future Contrarian managers.

2003 BCSECCOM 414

Order

¶ 3 Because it is not prejudicial to the public interest, the Commission orders under section 48 of the Act that Mavrix is exempt from the adviser registration requirement for securities advice provided to the future Contrarian managers, provided that Mavrix maintains its registration as an adviser under the *Securities Act* (Ontario) in good standing.

¶ 4 June 18, 2003

Brent W. Aitken
Vice Chair