

2004 BCSECCOM 690

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 hired under a written agreement with a BC registered dealer or adviser to provide advice to the BC registrant and its BC clients; the person is registered or qualified to provide the advice in the jurisdiction in which they reside; under a written agreement with its BC clients or the person, the BC registrant accepts responsibility for all losses resulting from inappropriate advice provided by the person

Exemption Order

Citibank Canada Investment Funds Limited

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

Background

- ¶ 1 Citibank Canada Investment Funds Limited (“CCIFL”) applied for an exemption from the adviser registration requirements in section 34(1)(c) of the *Securities Act* (British Columbia) (the “Act”) for certain advisers (the “Sub-advisers”) to CCIFL that are not resident in Canada.

Representations

- ¶ 2 CCIFL represents that:
1. it is incorporated under the laws of Canada with its registered and head office in Toronto, Ontario;
 2. it is registered under the Act as an adviser in the category of portfolio manager and as a dealer in the category of mutual fund dealer;
 3. it is a wholly-owned subsidiary of Citibank Canada, a Canadian chartered bank listed in Schedule II of the *Bank Act* (Canada), which is in turn an indirect subsidiary of Citigroup, Inc. (together with its affiliated entities, “Citigroup”);
 4. CCIFL wishes to retain the Sub-advisers to provide investment advice and portfolio management services to CCIFL in connection with accounts managed by CCIFL for clients resident in British Columbia; the Sub-advisers

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may be, but are not all, affiliates of Citigroup; the current Sub-advisers are not, and any future Sub-advisers will not be, resident in Canada;

5. each of the current Sub-advisers is, and any future Sub-advisers will be, licensed to provide investment advice and portfolio management services by the applicable regulator in the jurisdiction in which it is resident; and
6. CCIFL will have complete discretionary authority to purchase and sell securities on behalf of its clients for whose accounts the Sub-advisers provide investment advice or portfolio management services to CCIFL and will be authorized to delegate that discretionary authority to the Sub-advisers.

Order

¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders under section 48 of the Act that the Sub-advisers are exempt from the requirements of section 34(1)(c) of the Act for investment counseling and portfolio management services provided to CCIFL, provided that:

1. CCIFL enters into a written agreement with each Sub-adviser that sets out the duties and obligations of the Sub-adviser;
2. CCIFL contractually agrees with its clients for whose accounts the Sub-advisers provide investment advice or portfolio management services to CCIFL to be responsible for any loss that arises out of the failure of a Sub-adviser:
 - (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the client, or
 - (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;
3. CCIFL cannot be relieved from its responsibility for loss under condition 2 above.

¶ 4 December 1, 2004

Leslie Rose
Acting Manager