

2002 BCSECCOM 799

Headnote

Relief from adviser registration requirement to permit U.S. investment adviser to advise mutual fund manager provided that mutual fund manager remains liable for portfolio advice

Exemption Order

Clay Finlay Inc.

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

¶ 1 Background

Clay Finlay Inc. (the Adviser) applied for an exemption from the adviser registration requirements in section 34(1)(c) of the Act in order to provide certain investment counsel and portfolio management services in British Columbia to Ethical Funds Inc. (the Manager), which is a manager of certain mutual funds established under the laws of the Province of British Columbia;

¶ 2 Representations

The Adviser represents that:

1. the Adviser was formed under the laws of the State of New York;
2. the Adviser is registered as an investment adviser with the U.S. Securities and Exchange Commission under the *Investment Act of 1940*;
3. the Manager is a company incorporated under the laws of Canada and has its head office in the Province of British of Columbia;
4. the Manager is registered as a portfolio manager under the Act;
5. the Manager will be the manager, trustee and promoter of the Ethical Canadian Dividend Fund, Ethical US Special Equity Fund, Ethical Global Growth Fund, Ethical International Equity Fund, Ethical RSP International Equity Fund, Ethical European Equity Fund and Ethical RSP European Equity Fund (the Funds);
6. a preliminary simplified prospectus dated August 9, 2002 for the Funds was filed with the British Columbia Securities Commission and certain other jurisdictions;

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7. the simplified prospectus in respect of the Funds will disclose that the Manager remains liable for all portfolio advice provided by any sub-advisers, including the Adviser, and that it may be difficult to enforce legal rights against any sub-adviser located outside Canada; and
8. under an agreement (the Agreement) between the Adviser and the Manager, the Manager will retain the Adviser as a sub-adviser to provide investment advice with respect to the Ethical European Equity Fund and may retain the Adviser as a sub-adviser with respect to other funds comprising the Funds or other mutual funds in respect of which the Manager acts as manager including as portfolio manager (collectively, the Manager's Funds);

¶ 3 Order

Because it is not prejudicial to the public interest, the Executive Director orders under section 48 of the Act that the Adviser is exempt from the requirements of section 34(1)(c) of the Act in connection with the Adviser acting as an adviser to the Manager in respect of the Manager's Funds provided that:

- (a) the Agreement sets out the obligations and duties of the Adviser and the Manager; and
- (b) the Agreement provides that the Manager will be liable for all advice received from the Adviser and this liability is not waived.

¶ 4 September 18, 2002

Brenda Leong
Director