

2009 BCSECCOM 609

Headnote

Multilateral Instrument 11-102 *Passport System* - Securities Act s. 48 Adviser - Exemption from s.34(b) requirement to be registered as an adviser - 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; the BC client will obtain advice from and give all instructions through the BC registrant

Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(b) and 48

November 2, 2009

In the Matter of
the Securities Legislation of
British Columbia
(the Jurisdiction)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Invesco Trimark Ltd.
(the Filer)

Decision

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) exempting certain “affiliated” portfolio managers defined herein (the Sub-Advisers) from the adviser registration requirement under the Legislation in order to allow the Sub-Advisers to provide

2009 BCSECCOM 609

portfolio management services to the Filer for the benefit of certain clients of the Filer (the Clients) who are resident in the Jurisdiction (the Exemption Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

- (a) the British Columbia Securities Commission (the BCSC) is the principal regulator for this application; and
- (b) the Filer has provided notice pursuant to subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) that this decision is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (collectively, with the BCSC, the Filing Jurisdictions).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

“Affiliate” and any derivation thereof for purposes of the Exemption Sought shall mean any entity that is controlled by Invesco Ltd., or other ultimate parent company of the Filer, as the case may be, and “control” and any derivation thereof, means the possession, directly or indirectly, of the power to direct or significantly influence the management and policies/business or affairs of an entity whether through ownership of voting securities or otherwise.

Representations

This decision is based on the following facts represented by the Filer:

1. the Filer is a corporation established under the laws of the Province of Ontario. The Filer’s head office is located in Toronto, Ontario;
2. the Filer is registered with the Ontario Securities Commission (the **OSC**) and with each of the securities commissions of the Filing Jurisdictions as an adviser in the category of portfolio manager. The Filer is also registered with the OSC and with the Securities Commission of Newfoundland and Labrador as an exempt market dealer;
3. the Filer is registered as an investment adviser and as a transfer agent with the United States Securities and Exchange Commission and with the Financial Regulator (Ireland) as an investment manager and investment adviser to Irish authorized collective investment schemes;

2009 BCSECCOM 609

4. the Filer previously obtained relief akin to the Exemption Sought on facts similar to those contained herein from the BCSC in November 2001 (the 2001 Order), under the Filer's previous name of "AIM Funds Management Inc.". However, the Filer subsequently voluntarily surrendered its registration as an adviser with the BCSC, and so the 2001 Order is now of no force and effect;
5. the Exemption Sought is not required in Ontario because an exemption is available under Ontario Securities Commission Rule 35-502 *Non-Resident Advisers*. The BCSC is the principal regulator for the Exemption Sought because (i) the Exemption Sought is not required in Ontario and (ii) British Columbia is the jurisdiction with which the Filer has the most significant connection because outside of Ontario, where its management and the majority of its operations are located, British Columbia is the specified jurisdiction in which the majority of the Filer's operations are located;
6. the Filer is one of Canada's largest investment management companies. The Filer offers a diversified suite of investment solutions to institutions, organizations, companies and individual investors across Canada and around the world;
7. the Filer is an indirect wholly-owned subsidiary of Invesco Ltd., a publicly-traded company listed on the New York Stock Exchange. As such, the Filer leverages the global expertise of investment professionals at its affiliates worldwide;
8. the Filer intends to offer the investment counseling and portfolio management services of the Sub-Advisers to institutional Clients who wish to have exposure to capital markets in which the Sub-Advisers have experience and expertise; Clients will be resident in the Filing Jurisdictions in which the Filer is registered as an adviser in the category of portfolio manager;
9. each Sub-Adviser is, or will be, registered or otherwise qualified under applicable laws in the foreign jurisdiction where its head office is located to provide investment counseling and portfolio management services;
10. the Sub-Advisers will not be residents of Canada;
11. all Sub-Advisers will be affiliates of the Filer;

2009 BCSECCOM 609

12. each Client will enter into a written investment management agreement (an IMA) with the Filer which:
 - (a) provides the Filer with complete discretionary authority to purchase and sell securities on behalf of the Client; and
 - (b) authorizes the Filer to delegate its discretionary authority over all or a portion of the Client's assets to one or more of the Sub-Advisers.
13. the Filer will agree under the IMA to be responsible for any loss arising 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 Filer and the Client for whose benefit the investment advice is, or portfolio management services are, to be provided; or
 - (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances,
 - (c) and acknowledges that it cannot be relieved by Clients from this responsibility (collectively, the Assumed Liabilities).
14. the Filer will be responsible for providing the Clients with all applicable reports and statements required under the Legislation or IMA;
15. the Filer will enter into an agreement with each Sub-Adviser which will set out the obligations and duties of each party in connection with the investment counseling and portfolio management services provided to each Client and under which the Sub-Adviser will agree to act as a Sub-Adviser to the Filer for the benefit of Clients; such agreement will permit the Filer to exercise the degree of supervision and control it is required to exercise over what the Sub-Advisers do for the Clients;
16. if there is any direct contact between a Client and a Sub-Adviser in connection with the provision of investment counseling and portfolio management services, a representative of the Filer, duly registered to provide portfolio management and investment counseling services for securities in the Filing Jurisdiction where the Client is resident, will be present at all times, either in person or by telephone;
17. each Sub-Adviser who provides investment counseling and portfolio management services with respect to the assets of Clients would be

2009 BCSECCOM 609

considered to be acting as an “adviser” within the meaning of the Legislation, and in the absence of the Exemption Sought, would be required to register as an adviser under the Legislation, unless otherwise exempt;

18. the Filer has made or will make enquiries with respect to each Client to determine the investment objectives and strategies of the Client, and to the suitability of proposed transactions for the Client, and to otherwise comply with the “know your client” and “suitability” obligations under the Legislation. The Filer will provide this information to any Sub-Adviser who exercises discretionary authority over the assets of a Client;
19. there are no exemptions from the requirement to register as an adviser that the Sub-Advisers may rely on to provide investment counseling and portfolio management services to the Clients;
20. the Filer is not in default of securities legislation in any jurisdiction.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

- (a) the Filer is registered in good standing under the Legislation in a category that permits it to provide investment counselling and portfolio management services;
- (b) the obligations and duties of each Sub-Adviser are set out in a written agreement between the Sub-Adviser and the Filer;
- (c) the Filer contractually agrees with each Client to be responsible for the Assumed Liabilities and the Filer cannot be, and at no time is, relieved by the Clients from the Filer’s responsibility for the Assumed Liabilities;
- (d) each Sub-Adviser will be registered, licensed or otherwise legally permitted to provide investment advice and portfolio management services under the applicable securities laws of the jurisdiction or foreign jurisdiction in which the Sub-Adviser’s head office is located;
- (e) a Sub-Adviser will not have any direct contact with a Client in connection with the provision of investment counseling and portfolio

2009 BCSECCOM 609

management services unless a representative of the Filer, duly registered to provide portfolio management and investment counseling services for securities in the Filing Jurisdiction where the Client is resident, is present at all times, either in person or by telephone, and

- (f) for each jurisdiction, this decision will terminate 90 days after the coming into force of any rule, regulation or blanket order or ruling under the securities legislation of the jurisdiction that provides an equivalent exemption.

Sandra Jakab
Director, Capital Markets Regulations
British Columbia Securities Commission