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Date: 20050630

Headnote

Mutual Reliance Review System for Exemptive Relief Application – 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.

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 34(1)(a) and 48

**In the Matter of
the Securities Legislation of
Alberta and British Columbia (the Jurisdictions)**

and

**In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications
(the System)**

and

**In the Matter of
J.P. Morgan Securities Limited (JPMSL),
J.P. Morgan Futures Inc. (JPMFI)
and J.P. Morgan Securities Canada Inc. (JPMSCI)
(the Filers)**

MRRS Decision Document

Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filers from the requirement to be registered as a dealer in order to trade exchange contracts with Qualified Parties as defined in Schedule A (the Registration Relief).

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2. Under the System:

- 2.1 the Alberta Securities Commission is the principal regulator for this application;
- 2.2 this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

- 3. Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

4. This decision is based on the following facts represented by the Filers:

- 4.1 JPMSL is registered with the United Kingdom Financial Services Authority (FSA) and is authorized to trade in securities and exchange contracts in the United Kingdom. It is also a London Clearing House member and a clearing member of EUREX, Euronext Liffe and other exchanges. Its head office is located in London, England.
- 4.2 JPMFI is registered as a futures commission merchant (FCM) with the Commodity Futures Trading Commission (CFTC) pursuant to the *Commodity Exchange Act* of the United States of America and it is a member of the National Futures Association (NFA). It is also a clearing member of the Chicago Board of Trade, the Chicago Mercantile Exchange, the New York Mercantile Exchange and other domestic United States exchanges. Its head office is located in New York, United States.
- 4.3 Neither JPMSL nor JPMFI is registered under the securities legislation of any province or territory of Canada. Neither JPMSL nor JPMFI is able to be registered as a dealer (investment contracts) in the Jurisdictions because there is no available registration category for foreign dealers.
- 4.4 JPMSCI is registered as an investment dealer (equities and commodity contracts and options) in the provinces of Ontario and Quebec. It is a member of the Investment Dealers Association of Canada and the Montreal Exchange and it is a clearing member of the Canadian Derivatives Clearing Corporation.
- 4.5 J.P. Morgan Securities Inc. (JPMSI) is a securities dealer in the United States. It is registered as a broker-dealer under the 1934 Act and as an

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international dealer under the *Securities Act* (Ontario) (the Ontario Act). It is also a member of the National Association of Securities Dealers (NASD).

- 4.6 On July 1, 2004, J.P. Morgan Chase & Co. merged (the Merger) with Bank One Corporation to form JPMorgan Chase & Co. (JPMorgan). As a result of the Merger, Banc One Capital Markets Inc. (BOCM), a former affiliate of Bank One, became an indirect wholly-owned subsidiary of JPMorgan and an affiliate of each of the Filers and JPMSI.
- 4.7 At the time of the Merger, BOCM was a securities and exchange contracts dealer in the United States. It was registered as a broker-dealer under the 1934 Act, as an FCM with the CFTC, as a dealer (exchange contracts) under the Securities Act (Alberta) (the “Alberta Act”) and as an international dealer under the Ontario Act. It was also a member of both the NASD and the NFA.
- 4.8 On August 1, 2004, JPMorgan completed a two-step restructuring of BOCM for the purpose of rationalizing and consolidating the securities dealing, and the futures contracts and options on futures contracts (collectively, Futures Contracts) brokerage operations, conducted by the Filers and BOCM under which:
 - 4.8.1 BOCM’s Futures Contract brokerage operation was transferred to JPMFI; and
 - 4.8.2 JPMSI and BOCM amalgamated to form JPMSI.
- 4.9 As a result of this restructuring, JPMSI succeeded to BOCM’s registration as a dealer (exchange contracts) under the Alberta Act and applied to the principal regulator for permission to voluntarily surrender BOCM’s registration as:
 - 4.9.1 the individual registrants and the operational infrastructure which supported BOCM’s registration as a dealer (exchange contracts) now reside with JPMFI rather than with JPMSI, and JPMFI does not maintain registration in Canada; and
 - 4.9.2 unlike BOCM, JPMSI does not broker Futures Contracts and it is therefore not registered as a futures commission merchant with the CFTC and it is not a member of the NFA.

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- 4.10 Pending confirmation from its auditors that all financial obligations to BOCM clients in Alberta have been satisfied, JPMSI has consented to the voluntary suspension of BOCM's registration as a dealer (exchange contracts).
- 4.11 the Filers will restrict their marketing and brokerage activity in the Jurisdictions to trading in exchange contracts for Qualified Parties as defined in Schedule A.
- 4.12 JPMSI and JPMFI have undertaken to attorn to the jurisdiction of Alberta and provide an address for service in Alberta.
- 4.13 The Filers will not advertise their services through the use of television, radio or newspaper advertisements or other media of general circulation.
- 4.14 The exchanges (Recognized Exchanges) on which the exchange contracts will be traded will be the exchanges listed in Alberta Securities Commission Order 91-501 *Recognition of Exchanges Located Outside Alberta for the Purposes of Trading in Exchange Contracts* and Schedule A of British Columbia Instrument 21-501 *Recognition of exchanges, self-regulatory bodies and jurisdictions*.
- 4.15 The manner in which the trades in exchange contracts will be conducted will be one of the following:
 - 4.15.1 either of JPMSL or JPMFI will directly solicit a client in a Jurisdiction for the brokerage of exchange contracts on Recognized Exchanges without the involvement of JPMSCI; or
 - 4.15.2 JPMSCI will solicit a client in a Jurisdiction and refer the client to one of JPMSL or JPMFI for brokerage on a Recognized Exchange and JPMSCI will receive a referral fee from JPMSL or JPMFI, as applicable, such fee being fully disclosed to the client; or
 - 4.15.3 JPMSCI and either JPMSL or JPMFI will jointly solicit a client for JPMSL or JPMFI, respectively, for brokerage on a Recognized Exchange for which JPMSCI will receive a referral fee from JPMSL or JPMFI, as applicable, such fee being fully disclosed to the client.
- 4.16 As an FCM subject to regulatory oversight by the CFTC, JPMFI is required to ensure that customer positions and monies be separately

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accounted for and segregated from the positions and monies of JPMFI. The CFTC regulations are designed to protect customers in the event of the insolvency or financial instability of an FCM through which they clear their futures and futures options business. JPMFI receives acknowledgements from those of its banks and brokers holding JPMFI client funds that such funds are to be separately held on behalf of JPMFI's clients, with no right of set-off against JPMFI's obligations or debts.

- 4.17 As a futures broker subject to regulatory oversight by the FSA, JPMSL is required to hold client segregated monies separately from those of JPMSL and cannot use such monies to offset JPMSL's liabilities. As required by applicable United Kingdom regulation, JPMSL obtains acknowledgements from those of its banks and brokers holding JPMSL client funds that such funds are to be held on behalf of JPMSL's clients, with no right of set-off against JPMSL's obligations or debts.

Decision

5. Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met.
6. The decision of the Decision Makers under the Legislation is that the Registration Relief is granted provided that:
- 6.1 the trade is solicited by the Filers and is conducted on behalf of a Qualified Party that is a client of either JPMFI or JPMSL;
- 6.2 the trade is made on a Recognized Exchange; and
- 6.3 JPMSL maintains in good standing its registration as a dealer with the FSA and JPMFI maintains in good standing its registration as an FCM with the CFTC and its membership with the NFA.
7. This decision will expire on June 30, 2007.

Glenda A. Campbell, Q.C., Vice-Chair
Alberta Securities Commission

Stephen R. Murison, Vice-Chair
Alberta Securities Commission

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Schedule A

Qualified Party means:

Banks

(A) a bank to which the Bank Act (Canada) applies;

(B) Business Development Bank of Canada continued under the Business Development Bank of Canada Act (Canada);

(C) a bank subject to the regulatory regime of a country that is a member of the Basle Accord (the Accord) or a country that is not an initial signatory to the Accord but has adopted the regulatory and supervisory rules set out in the Accord if the bank has a minimum paid up capital and surplus, as shown on the last audited balance sheet, in excess of \$100 million (or its equivalent in another currency);

Commercial User

(D) a person or company that sells, buys, trades, produces, markets, brokers or otherwise uses in its business a commodity and as a consequence enters into exchange contracts;

Credit Unions and Caisses Populaires

(E) a credit union central or a federation of caisses populaires or any credit union or regional caisse populaire located, in each case, in Canada;

Loans and Trust Companies

(F) a loan or trust corporation registered under the loan and trust corporations legislation of a province or territory of Canada or under the *Trust and Loan Companies Act* (Canada);

(G) a loan or trust company subject to the regulatory regime of a country that is a member of the Basle Accord or a country that is not an initial signatory to the Accord but has adopted the regulatory and supervisory rules set out in the Accord if the loan company or trust company has a minimum paid up capital and surplus, as shown on the last audited balance sheet, in excess of \$100 million (or its equivalent in another currency);

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Insurance Companies

(H) an insurance company licensed to do business in Canada or a province or territory of Canada if the insurance company has a minimum paid up capital and surplus, as shown on the last audited balance sheet, in excess of \$100 million (or its equivalent in another currency);

(I) an insurance company subject to the regulatory regime of a country that is a member of the Basle Accord or a country that is not an initial signatory to the Accord but has adopted the regulatory and supervisory rules set out in the Accord if the insurance company has a minimum paid up capital and surplus, as shown on the last audited balance sheet, in excess of \$100 million (or its equivalent in another currency);

Sophisticated Entities

(J) a person or company that

(i) together with its affiliates has entered into one or more transactions involving exchange contracts with counterparties that are not its affiliates, if

(a) the transactions had a total gross dollar value of or equivalent to at least \$1 billion in notional principal amount; and

(b) any of the contracts relating to one of these transactions were outstanding on any day during the previous 15 month period, or

(ii) together with its affiliates had total gross marked-to-market positions of or equivalent to at least \$100 million aggregated across counterparties, with counterparties that are not its affiliates in one or more transactions involving exchange contracts on any day during the previous 15 month period;

Individuals

(K) an individual who has a net worth of at least \$5 million (or its equivalent in another currency) excluding the value of his or her principal residence, and any holding company of which such individual owns all of the shares;

Governments/Agencies

(L) Her Majesty in right of Canada or any province or territory of Canada and all crown corporations, instrumentalities and agencies of the Canadian federal or provincial or territorial governments or the Alberta Treasury Branch;

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(M) a national government of a country that is a member of the Basle Accord or a country that is not an initial signatory to the Accord but has adopted the regulatory and supervisory rules set out in the Accord and any instrumentality or agency of that government or corporation wholly-owned by that government;

(N) a Canadian municipality with a population in excess of 50,000 and any Canadian provincial or territorial capital city;

Corporations and other Entities

(O) a company, partnership, unincorporated association, organization or trust, other than an entity referred to in (A), (B), (C), (D) (E), (F), (G), (H), (I) and (J) with total assets, as shown on the last audited balance sheet, in excess of \$25 million (or its equivalent in another currency);

Pension Plan or Fund

(P) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a provincial or territorial pension commission, if the pension fund has total net assets, as shown on the last audited balance sheet, in excess of \$50 million, provided that, in determining net assets, the liability of a fund for future pension payments shall not be included;

Mutual Funds and Investment Funds

(Q) a mutual fund or non-redeemable investment fund if each investor in the fund is a Qualified Party;

(R) a mutual fund if the investments of the fund are managed by a company that is registered under the Act or securities legislation of another province or territory in Canada as a portfolio manager;

(S) a non-redeemable investment fund if the person responsible for providing investment advice to the fund is registered under the Act or securities legislation of another province or territory in Canada as an adviser, other than a securities adviser;

Brokers/Investment Dealers

(T) a person or company registered under the Act or securities legislation of another province or territory in Canada as a broker or an investment dealer or both;

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(U) a person or company registered under the Securities Act (Ontario) as an international dealer if the person or company has total assets, as shown on its last audited balance sheet, in excess of \$100 million or its equivalent in another currency;

(V) a person or company whose account is fully managed by a registered portfolio manager or broker or investment dealer acting as a trustee or agent for such person or company;

(W) a direct or indirect wholly-owned subsidiary of any of the entities described in paragraphs (A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (L), (M), (N), (O), (P), (T) and (U);

(X) a holding body corporate of which any of the entities described in paragraphs (A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (L), (M), (N), (O), (T) and (U) is a direct or indirect wholly-owned subsidiary;

(Y) a direct or indirect wholly-owned subsidiary of a holding body corporate described in paragraph (X);

(Z) a firm, partnership or joint venture or other form of unincorporated association in which one or more of the entities described in paragraphs (W), (X) or (Y) have a direct or indirect controlling interest;

(AA) a party whose obligations in respect of the exchange contract for which the determination is made are fully guaranteed by another Qualified Party;

(BB) a portfolio manager or a financial intermediary referred to in paragraphs (A), (E), (F), (H), (L), (T) or (U) above, while acting as manager of accounts of a person, company, pension fund or pooled fund trust, which accounts are fully managed by such portfolio manager or financial intermediary; and

(CC) a broker or investment dealer acting as a trustee or agent for the person, company, pension fund or pooled fund trust.

For the purposes of the foregoing:

- (a) a party is a Qualified Party if that party is a Qualified Party at the time the party enters into the transaction; and
- (b) all requirements that are based on the amounts shown on the balance sheet of an entity shall be determined by reference to the audited

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consolidated balance sheet of the entity for its most recently completed financial year end.