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Headnote

Securities Act s. 48 Adviser - Exemption from s.34(1)(c) requirement to be registered as an adviser - A person who resides in BC wants to advise non-BC residents. - The person will comply with all applicable securities laws of each jurisdiction in which they advise; the person is registered or is exempt from registering to provide investment advice in the other jurisdictions in which they will advise or will only advise sophisticated clients.

Exemption Order

Passport Capital Corp.

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

Background

- ¶ 1 Passport Capital Corp. (Passport), on its own behalf and on behalf of up to five investment professionals it may employ from time to time (collectively, the Applicants) has applied for an exemption from the adviser registration requirement in Section 34(1)(c) (the Adviser Registration Requirement) of the Act in order to provide portfolio management and other investment advisory services (Securities Advice) to two San Francisco-based companies within its corporate group, namely Passport Management, LLC (Passport Management) and Passport Capital, LLC (Passport Capital).

Representations

- ¶ 2 Passport represents that:
1. it is an unlimited liability company that was incorporated under the laws of Nova Scotia on May 11, 2007;
 2. its principal office and place of business is 625 Howe Street, 5th Floor, Vancouver, B.C., V6C 2T6;
 3. it is an indirect wholly-owned subsidiary of Passport Capital. Passport currently employs two investment professionals, and will at all times during the term of this order, employ no more than five investment professionals;
 4. it currently provides geological and other technical expertise, research and analysis on mining companies to Passport Management and Passport Capital;

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5. it proposes to provide Securities Advice to Passport Management and Passport Capital;
6. it and the investment professionals it intends to employ are exempt from registration with the United States Securities and Exchange Commission (the SEC) because of a statutory exemption available to them;
7. Passport Capital is:
 - (a) a San Francisco based, global investment firm founded in 2000 as a limited liability company organized under the laws of Delaware;
 - (b) a federally registered investment adviser with the United States Securities and Exchange Commission (the SEC);
 - (c) currently managing approximately US\$2.0 billion in assets, using an investment process that combines macroeconomic analyses to develop major themes and fundamental research on individual companies to create global portfolios;
8. Passport Management:
 - (a) is a limited liability company organized under the laws of Delaware;
 - (b) is a San Francisco-based investment manager of various "Passport group" private investment funds, including certain funds whose investment objectives include making investments in "basic materials" companies, including companies in the mining sector (collectively, the Funds);
 - (c) is a federally registered investment adviser with the SEC. The sole managing member of Passport Management is Passport Capital;
 - (d) provides Securities Advice to the Funds under investment management agreements (the Agreements), and has full investment discretion and authority to buy and sell securities for the benefit of the Funds;
 - (e) will, as allowed under the Agreements, delegate its investment authority with respect to the Funds to the Applicants so they can make certain investment decisions on behalf of the Funds;
9. the Funds are organized according to the laws of foreign jurisdictions;

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10. investments in the funds are offered only on a private placement basis, principally to investors outside of Canada;
11. the Applicants will limit their Securities Advice to related entities, namely Passport Management, Passport Capital and the Funds;
12. the Applicants will not carry on any other Securities Advice in British Columbia or elsewhere unless they obtain the necessary registration from the Commission or a further exemption;
13. Passport Management will:
 - (a) supervise the Applicant's Securities Advice;
 - (b) have the power to revoke the investment discretion it delegated to the Applicants at any time;
14. Passport Management and Passport Capital have sufficient knowledge of financial affairs to adequately assess the Securities Advice the Applicants will provide;
15. each of Passport Management and Passport Capital are aware that:
 - (a) the Applicants are not and will not be registered as advisers under the Act;
 - (b) the Applicants may not satisfy the same proficiency requirements as persons registered under the Act; and
 - (c) they may not have the same protection that they would otherwise have if the Applicants were registered as advisers under the Act;
16. Passport Management, under the Agreements, will still be liable to the Funds for any delegation of its investment discretion or services to the Applicants;
17. any distribution of securities of the Funds to Canadian investors will be limited to accredited investors, as defined in National Instrument 45-106 – *Prospectus and Registration Exemptions* (NI 45-106);
18. by providing Securities Advice to Passport Management and Passport Capital, the Applicants would be considered to be acting as advisers under the Act and would be required to be registered, or be otherwise exempt from registration,

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as advisers under the Act; and

19. there are no exemptions from the Adviser Registration Requirement that the Applicants can rely on to provide Securities Advice to Passport Management and Passport Capital.

Order

¶ 3 Considering that it is not prejudicial to the public interest, the Executive Director orders under Section 48 of the Act that the Applicants are exempt from the Adviser Registration Requirements for providing Securities Advice to Passport Management and Passport Capital provided that:

1. Passport Management and Passport Capital maintain in good standing their registrations as investments advisers with the SEC;
2. The Applicants continue to be exempt from registration with the SEC or register with the SEC when they no longer qualify for the exemption;
3. Any Canadian investors in the Funds are accredited investors as defined in NI 45-106.

¶ 4 March 13, 2009

Sandra Jakab
Director, Capital Markets Regulation