

# 2010 BCSECCOM 398

May 31, 2010

## Headnote

1996 Securities Act s.48 Dealer – Exemption from s. 34(1)(a) requirement to be registered as a dealer to trade securities – A person not registered as a dealer in B.C. wants to do a trade that requires a B.C. registered dealer – The person is a broker dealer in the U.S.; it only does trading for its members; all B.C. members must have successfully completed the U.S. series 7 general securities representative qualification exam and be registered with NASD; each members trading liability is limited; all trades are on markets outside of Canada.

## Applicable Legislative Provisions

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

Exemption Order

ECHOTrade LLC

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

## Background

- ¶ 1 ECHOTrade LLC (the Filer) has applied for an exemption from the dealer registration requirement in Section 34 of the Securities Act (British Columbia) (the Act) to provide execution and clearing services to members of the Filer resident in British Columbia (Traders) (the Requested Relief).

## Representations

- ¶ 2 This decision is based on the following facts represented by the Filer:
1. The Filer is organized under the laws of Delaware and its principal office is in Phoenix, Arizona;
  2. The Filer is registered in the United States as a broker-dealer with the Securities and Exchange Commission (SEC) and is a member of the NASDAQ OMX PHLX, Inc. (PHLX);
  3. In respect to its operations in British Columbia, the Filer will trade solely for Traders' accounts and only in securities listed on markets outside of Canada;

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4. In order to become a member of the Filer, each Trader must be at least 18 years of age, pass a criminal background check and successfully complete the Series 7 General Securities Representative Qualification Exam in the United States;
5. If the Filer requires a capital contribution from its members, it will generally be no more than \$25,000 for normal trading activities;
6. It is the Filer's policy to limit liability for its members, so that a member cannot lose more than the capital contribution made by such member to the Filer unless a member has violated the rules of the SEC or the PHLX or the Filer's policies and procedures;
7. Traders will be strictly limited to trading in the capital of the Filer contributed by each Trader. The Filer's total capital is approximately US\$40,000,000;
8. Traders will trade only in equity securities or options on equity securities of United States domestic issuers and all orders will be routed electronically to stock exchanges and electronic communication networks in the United States, and cleared through Merrill Lynch Professional Clearing Corp.;
9. Traders will be required to be registered with the PHLX;
10. As persons registered with the PHLX, Traders will have the same rights as a United States registered person to refer a dispute with the Filer to binding arbitration or to refer a matter to the PHLX or the SEC for regulatory review;
11. The Filer will give no advice or direction to the Traders about what securities they should purchase;
12. The Filer will carry on business in British Columbia in accordance with the policies and guidelines of the Filer's offices in the United States and will be subject to the regulatory oversight of the SEC and the PHLX; and
11. By virtue of the clearing and execution services provided by the Filer to Traders, the Filer would be considered to be trading in securities as a dealer under the Act. The Filer's proposed activities do not fall within any of the registration exemptions set out in National Instrument 31-103

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*Registration Requirements and Exemptions* or otherwise available under applicable securities laws in British Columbia. Accordingly, in the absence of the relief requested by this application, the Filer would be required to obtain and maintain registration in British Columbia as a dealer.

### **Decision**

¶ 3 Considering that it is not prejudicial to the public interest, the Commission orders that the Requested Relief is granted provided that the Filer:

- (a) trades only in securities listed on markets outside of Canada;
- (b) maintains its registration as a broker-dealer with the SEC and its membership with the PHLX; and
- (c) does not solicit trades from any person in British Columbia and ensures that the Traders do not solicit trades from any person in British Columbia.

Sandra Jakab  
Director, Capital Markets Regulation  
British Columbia Securities Commission