

2007 BCSECCOM 238

May 7, 2007

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 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 or carry on business; the person will only trade exchange contracts with “accredited investors”; the person is not providing advice or only providing advice as incidental to the trades.

Applicable Legislative Provisions

Securities Act, s. 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**

and

**In the Matter of
UBS Securities LLC (the Filer)**

MRRS Decision Document

¶ 1 Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer be exempt from the requirement to be registered as a dealer in order to trade exchange contracts with qualified parties as defined in Alberta Securities Commission Blanket Order 91-502 *Over the Counter Derivatives Transactions and Commodity Contracts* (the Qualified Parties) (the Registration Relief).

2007 BCSECCOM 238

2. Under the Mutual Reliance Review System for Exemptive Relief Applications:
 - (a) the Alberta Securities Commission is the principal regulator for this application; and
 - (b) this MRRS decision document evidences the decision of each Decision Maker.

¶ 2 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.

¶ 3 Representations

4. This decision is based on the following facts represented by the Filer:
 - (a) the Filer is a limited liability company incorporated under the laws of the state of Delaware;
 - (b) the Filer is a broker-dealer registered with the SEC, a member of the U.S. National Association of Securities Dealers, Inc. (NASD), a registered futures commission merchant with the U.S. Commodity Futures Trading Commission (CFTC), and a member of the U.S. National Futures Association (NFA);
 - (c) the Filer proposes to offer Qualified Parties in the Jurisdictions the ability to trade in exchange contracts on exchanges listed in Alberta Securities Commission Blanket 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* (the Recognized Foreign Exchanges);
 - (d) the Filer has no establishment in the Jurisdictions or directors, officers, employees or agents resident in the Jurisdictions;
 - (e) the Filer will restrict its activity in the Jurisdictions to trading in exchange contracts for Qualified Parties on Recognized Foreign Exchanges, and providing incidental advice therewith;
 - (f) the Filer will attorn to the jurisdiction of the courts of each Jurisdiction and will appoint an agent for service in each Jurisdiction;

2007 BCSECCOM 238

- (g) if the Filer is a member of the Recognized Foreign Exchange on which the trade will be made, it will execute the trade order on the exchange in accordance with the rules and customary practice of the exchange;
- (h) if the Filer is not a member of the Recognized Foreign Exchange on which the trade will be made, it will engage a local broker, which may be an affiliate of the Filer, to assist in the execution and clearance of the trade; and
- (i) notwithstanding whether the Filer conducts order execution and clearance of a trade or engages another dealer to assist in the execution and clearance of a trade, the Filer remains responsible for the execution and, unless the client has directed otherwise, clearance of each trade in an exchange contract.

¶ 4 **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:
 - (a) the trade is made on a Recognized Foreign Exchange such that trade order execution and clearance is wholly conducted outside the Jurisdictions;
 - (b) the trade is conducted for a Qualified Party that is a client of the Filer;
 - (c) at the time of the trade the Filer is:
 - (i) registered with the SEC as a broker-dealer in good standing;
 - (ii) registered as a futures commission merchant with the CFTC in good standing; and
 - (iii) a member in good standing with the NASD and the NFA; and
 - (d) the Filer provides the following disclosure to each client when opening the client's account:
 - (i) a statement that there may be difficulty in enforcing any legal rights against the Filer or any of its directors, officers, employees

2007 BCSECCOM 238

or agents, because they are resident outside of the Jurisdictions and all or substantially all of their assets are situated outside of the Jurisdictions;

- (ii) a statement that the Filer is not registered under the Legislation and, accordingly, the protection available to clients of a dealer registered under the Legislation will not be available to clients of the Filer;
- (iii) the name and address of the agent for service in the Jurisdictions, as applicable; and
- (iv) a risk disclosure statement providing substantially similar disclosure to that required under the Legislation for registered dealers trading in exchange contracts.

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

Stephen R. Murison, Vice-Chair
Alberta Securities Commission