

# 2007 BCSECCOM 540

## 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 advice is in the form of research reports prepared by an employee of a dealer registered in another Canadian jurisdiction (Ontario); the reports are within the expertise of the employee; the reports are provided to the dealer's foreign registered affiliates and the affiliates may distribute the reports to their clients; the affiliates will be responsible to their clients for the investment advice in the reports; the filers will not discuss the reports with any BC resident.

## Exemption Order

**Macquarie North America Ltd. (MNAL) and Mark Barclay (Barclay)  
(together referred to as “the Filers”)**

**Section 48 of the *Securities Act*, RSBC 1996, c. 418 (the Act)**

## Background

- ¶ 1 The Filers have applied to the Commission for an exemption from the requirement to be registered as an adviser under section 34(1)(c) of the Act (the Registration Requirement) with respect to advising activities in the form of research reports.

## Representations

- ¶ 2 The Filers represent that:
1. MNAL is incorporated under the laws of Canada and has an office in Vancouver, British Columbia (BC) and its head office is in Toronto, Ontario;
  2. MNAL is registered with the Ontario Securities Commission as a limited market dealer and is not in default of any of its obligations as a registrant in Ontario;
  3. MNAL participates in debt and equity offerings to accredited investors, as defined in National Instrument 45-106 *Prospectus and Registration Exemptions*, and offers advice on corporate mergers and acquisitions;

## 2007 BCSECCOM 540

4. MNAL is a subsidiary of the Macquarie Group, which is headquartered in Australia; Macquarie Securities is a business division of the Macquarie Group, which operates through various subsidiaries of Macquarie Group, and conducts business in institutional stock broking, among other things, and in connection therewith provides research reports; Macquarie Securities' affiliates (Affiliates) are located in numerous jurisdictions throughout the world;
5. Barclay has worked as an analyst in Korea since 1998 and as an analyst with Macquarie Securities Korea Limited (Macquarie Korea) since 2002, where he has prepared research reports principally about Korean and other Far East issuers;
6. Barclay is relocating to BC and will be an employee of MNAL in MNAL's Vancouver, BC office where he will prepare the same type of research reports (Reports) he prepared while employed with Macquarie Korea; Barclay will be the only employee of MNAL preparing the Reports;
7. Barclay is a Chartered Financial Analyst and has the necessary industry experience to give the investment advice that is the subject of the Reports;
8. Barclay will provide the Reports to certain Affiliates, including Macquarie Korea; the Reports will be used by these Affiliates in connection with their businesses as securities brokers and dealers in various jurisdictions;
9. the Affiliates will, after conducting a vetting process, distribute the Reports globally to their institutional or sophisticated and high net worth clients (Clients);
10. the Reports will
  - (i) contain information about issuers and particular sectors as well as general investment advice;
  - (ii) be written in compliance with all applicable securities laws of BC; and
  - (iii) contain appropriate disclaimers and will be subject to the laws applicable to their use by Affiliates using the Reports;
11. certain Clients who reside outside BC, may contact Barclay to discuss the contents of the Reports for additional information;

## 2007 BCSECCOM 540

12. neither Barclay nor MNAL will
  - (i) provide advice to any Client on the basis of the particular investment objectives of the Client;
  - (ii) be involved in managing the investment portfolios of the Clients;
  - (iii) have any entitlement to exercise any discretionary authority in respect of Client portfolios;
13. Barclay and MNAL have no other involvement with the Reports; MNAL does not intend to use the Reports in any trading it might do as a limited market dealer, or pursuant to dealer registration exemptions elsewhere in Canada; and
14. to the extent that each of the Filers would be considered to be acting as an adviser under the Act in connection with the preparation and provision of the Reports as described herein, without an exemption order they would be required to be registered or otherwise exempt from registration as an adviser under the Legislation, and there are no exemptions from the adviser registration requirement that the Filers can rely on in this connection.

### **Order**

- ¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders under section 48 of the Act that MNAL and Barclay are exempt from the Registration Requirement with respect to the Reports provided that:
- (1) MNAL and Barclay will only provide the Reports to the Affiliates for use in connection with the Affiliates' businesses as brokers and dealers;
  - (2) each Affiliate to whom the Reports are provided:
    - (a) acknowledges in a written agreement with MNAL that the Affiliate will be responsible to any Client the Affiliate distributes a Report to, for;
      - (i) the investment advice set out in the Report; and
      - (ii) any advice that may be given by Barclay to the Client in any conversation he has with the Client to discuss the contents of the Report.
    - (b) shall be responsible for ensuring that the provision of the Reports to the Clients in any jurisdiction is in compliance with the laws of such jurisdiction.

## **2007 BCSECCOM 540**

- (3) MNAL and Barclay will not discuss the Reports with any BC residents.
- (4) MNAL maintains in good standing its registration with the Ontario Securities Commission.

¶ 4 September 4, 2007

Sandra Jakab  
Director, Capital Markets Regulation