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August 31, 2006

Headnote

1996 Securities Act s. 48 Adviser - Exemption from s.34(1)(c) requirement to be registered as an adviser - A person who resides outside BC wants to advise BC residents. - The person is hired under a written agreement with a BC registered dealer or adviser to provide advice to the BC registrant and its BC clients; the person is registered or qualified to provide the advice in the jurisdiction in which they reside; under a written agreement with its BC clients or the person, the BC registrant accepts responsibility for all losses resulting from inappropriate advice provided by the person; the BC client will obtain advice from and give all instructions through the BC registrant.

Applicable Legislative Provisions

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

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

and

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

and

In the Matter of Goldman Sachs Asset Management, L.P. (GSAM)

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 GSAM on behalf of certain affiliates of GSAM that are resident outside Canada (the Advisers) for an exemption from the requirements in the securities legislation of the Jurisdictions (the Legislation) to be registered as an adviser; the exemption will allow the Advisers to provide investment counselling and portfolio management services to certain clients of GSAM who reside in Jurisdictions in which the Advisers are not registered (the Registration Relief).

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Under the System,

- (a) British Columbia is the principal regulator for this application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

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

Representations

- ¶ 3 This decision is based on the following facts represented by GSAM:
- 1. GSAM is a limited partnership governed by the laws of the State of Delaware with its head office in New York, New York;
 - 2. the general partner of GSAM is The Goldman Sachs Group, Inc. and the limited partner is Goldman Sachs Global Holdings L.L.C.;
 - 3. GSAM is registered under the Legislation as a non-resident portfolio manager (securities and exchange contracts) in British Columbia, as a foreign adviser (securities and exchange contracts) in Alberta, as an investment counsel/portfolio manager in Saskatchewan, as a securities adviser in Manitoba and as a non-resident fully registered adviser in Ontario; GSAM is also registered as a non-resident commodity trading manager under the *Commodity Futures Act* (Ontario) and as an investment adviser with the United States Securities and Exchange Commission;
 - 4. all of the Advisers will be affiliates of GSAM; for this purpose, an affiliate of GSAM means any entity that is controlled by The Goldman Sachs Group, Inc. and “control” and any derivation thereof means the possession, directly or indirectly, of the power to direct or significantly influence the management and policies/business or affairs of an entity whether through the ownership of voting securities or otherwise;
 - 5. the Advisers will not be residents of Canada;
 - 6. each Adviser is, or will be, registered or otherwise qualified under applicable laws in the foreign jurisdiction in which its head office is located to provide investment counselling and portfolio management services;

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7. GSAM provides investment counselling and portfolio management services to its clients resident in the Jurisdictions under the conditions of its registration in each Jurisdiction;
8. GSAM intends to offer the investment counselling and portfolio management services of the Advisers to those clients resident in the Jurisdictions (Clients) who wish to have exposure to capital markets located in a jurisdiction in which the Advisers have experience and expertise;
9. each Client will enter into an investment management agreement (IMA) with GSAM which:
 - (a) provides GSAM with complete discretionary authority to purchase and sell securities and, where GSAM is appropriately registered, exchange traded derivatives on behalf of the Client, and
 - (b) authorizes GSAM to delegate its discretionary authority over all or a portion of the Client's assets to one or more of the Advisers;
10. GSAM will agree under the IMA to be responsible for any loss arising directly out of the failure of an Adviser:
 - (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of GSAM and the Client for whose benefit the investment advice is, or portfolio management services are, to be provided, or
 - (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances,(collectively, the Assumed Obligations);
11. GSAM will not be relieved by Clients from the Assumed Obligations;
12. GSAM will enter into an agreement with each Adviser which will set out the obligations and duties of each party in connection with the investment counselling and portfolio management services provided to Clients and pursuant to which the Adviser will agree to act as a sub-adviser to GSAM for the benefit of Clients;
13. the Advisers who provide investment counselling and portfolio management services to Clients would be considered to be acting as an "adviser" within the meaning of the Legislation , and in the absence of the Registration Relief or an

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existing exemption, would be required to be registered as an adviser under Legislation;

14. the Advisers are not registered under the Legislation; and
15. there are no exemptions from the adviser registration requirement that the Advisers may rely on to provide investment counselling and portfolio management services to Clients.

Decision

- ¶ 4 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.

The decision of the Decision Makers under the Legislation is that the Registration Relief is granted, provided that:

1. the obligations and duties of each Adviser are set out in a written agreement with GSAM;
2. GSAM contractually agrees with each Client that GSAM will be responsible for the Assumed Obligations;
3. GSAM cannot be relieved of the Assumed Obligations by Clients;
4. GSAM is registered under the Legislation as an adviser in the appropriate category of registration having regard to the type of advisory services being provided to the Client;
5. each Adviser will be licensed or otherwise legally permitted to provide investment advice and portfolio management services under the applicable laws of the jurisdiction in which it resides;
6. only GSAM will receive instruction and provide advice directly to Clients;
7. if there is any direct contact between a Client and an Adviser, a representative of GSAM, duly registered to provide portfolio management and investment counselling services for securities and/or exchange contracts in the Jurisdiction where the Client is resident, will be present at all times, either in person or by telephone;

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8. despite 7 above, an Adviser will not have any direct and personal contact with a Client residing in Alberta if the Adviser is not registered under the securities legislation of that province; and
9. in Manitoba, the Registration Relief is available only to Advisers who are not registered in any Canadian jurisdiction.

L.E. Evans, CA
Director, Capital Markets Regulation
British Columbia Securities Commission