

## 2008 BCSECCOM 548

### Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – relief from requirement to register as adviser – person who resides outside BC wants to advise BC clients – 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 – *Securities Act*, s. 34(1)(c)

### Applicable Legislative Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34 and 48

October 14, 2008

In the Matter of  
the Securities Legislation of  
British Columbia  
(the Jurisdiction)

and

In the Matter of  
  
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
NT Global Advisors, Inc.  
(the Filer)

### DECISION

### Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer(s) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation), in particular, under section 48 of the Securities Act (British Columbia) (the Act), on behalf of certain proposed sub-advisers (the Sub-Advisers) from relief from the requirement contained in section 34(1)(c) of the Act that the Sub-Advisers be registered as a dealer in British Columbia in connection with providing certain sub-advisory services to the Filer



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for the benefit of certain clients (each, a Client) of the Filer resident in British Columbia. Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 Passport System (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, New Brunswick and Nova Scotia.

### **Interpretation**

- ¶ 2 Terms defined in National Instrument 14-101 Definitions and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. the Filer is a company incorporated under the laws of Ontario and having its registered office in Toronto, Ontario. The Filer is registered as a investment counsel/portfolio manager, or similar category, in all of the provinces of Canada other than Prince Edward Island and Newfoundland and Labrador. The Filer is also registered as a limited market dealer in Ontario;
  - 2. the Filer proposes to offers to its Clients certain portfolio management services utilizing the assistance of the Sub-Advisers. The services to be offered (Services) shall consist of portfolio management and advisory services, including transition management (Transition Management) and separately managed accounts (SMAs);
  - 3. Transition Management services are expected to be provided by the Filer to trust or custodial securities accounts. In providing these services, the Filer manages the liquidation or restructuring of the account associated with the substitution of one investment manager by another. In carrying out such services, the Filer is provided with detailed instructions indicating the changes in the portfolio to be effected by it. The Filer typically will have no discretion as to the desired composition of the portfolio, but some discretion in the timing and strategy used to change the composition of the portfolio in the most effective and efficient manner for the account;
  - 4. SMA services consist of fully discretionary management of an investment account of a Client by the Filer;



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5. the Sub-Advisers proposed to be utilized by the Filer for the Services will be affiliated entities of the Filer located and carrying on business in the United States. The Filer will utilize the most appropriate Sub-Adviser from within the Northern Trust organization having regard to the specific nature of the Services provided, but any Sub-Adviser selected to assist the Filer will be an entity that
  - (a) has its head office or principal place of business outside of Canada;
  - (b) is registered, or operated under an exemption from registration, under the securities legislation of the United States, in a category of registration that permits it to carry on the activities in the United States that the Filer is permitted to carry on in the provinces in which it is registered; and
  - (c) engages in the business of an adviser in the United States;
6. Northern Trust Corporation is a bank holding company located in Chicago, Illinois, the principal subsidiary of which is The Northern Trust Company, an Illinois banking corporation which provides a broad range of banking and financial services to institutional and person clients in the United States and internationally. The Northern Trust Company has U.S.\$442.7 billion in assets under management at this time;
7. the United States-based affiliated Sub-Advisers expected to be initially utilized by the Filer to assist on the Services are The Northern Trust Company and its subsidiary, Northern Trust Investments, N.A. Northern Trust Investments, N.A. is a national banking association with trust powers. Northern Trust Investments, N.A. is registered as an investment adviser with the U.S. Securities and Exchange Commission and has U.S.\$329 billion in assets under management at this time;
8. it is proposed that a Canadian investor wishing to avail itself of the Services will enter into an investment management agreement with the Filer establishing an account and setting out the terms and conditions and the respective rights, duties and obligations of the Client and the Filer. Such agreement will provide the Filer with complete discretionary authority, within the ambit of the mandate agreed on with the Client, to purchase and sell securities on behalf of the Client, and authorize the Filer to select and retain Sub-Advisers to provide investment advisory services for the benefit of the Client, and, in some cases, authorize the Filer to delegate discretionary authority over the Client's account to the Sub-Adviser. The Filer will also communicate with the Client for the purposes of obtaining all requisite Know



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Your Client (KYC) and suitability information and, in connection therewith, the Client will, with the assistance of the Filer, and as applicable to the assignment for the Client, prepare and complete an investment policy statement that outlines the Client's investment objectives and level of risk tolerance;

9. once KYC and suitability information is obtained, and the contract is executed, the information provided by the Client will be provided to the Sub-Adviser. A team of duly registered specialists employed by the Sub-Adviser then will provide the services contemplated by the agreement to the extent required by the Filer. The exact ambit of the Sub-Adviser's discretion with respect to the Client's portfolio will depend on the mandate given to the Filer by the Client;
10. the Filer will retain a Sub-Adviser as a sub-adviser in respect of the desired Services pursuant to one or more written sub-advisory agreements (each, a Sub-Advisory Agreement). In retaining such Sub-Adviser pursuant to a Sub-Advisory Agreement, the Filer and the Sub-Adviser will comply with the requirements of section 7.3 of Ontario Securities Commission Rule 35-502 Non-Resident Advisers (OSC Rule 35-502) and accordingly:
  - (a) the obligations and duties of the Sub-Adviser will be set out in the relevant Sub-Advisory Agreement;
  - (b) the Filer will contractually agree with each Client on whose behalf Services are to be provided by the Sub-Adviser, to be responsible for any loss that arises out of the failure of the Sub-Adviser;
    - (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Filer and the Client(s) for whose benefit the Services are to be provided;
    - (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances; and
  - (c) the Filer will not be released by the Clients from its responsibility for loss under paragraph 9(b) above;
11. if there is any direct contact between a Client and a Sub-Adviser, a representative of the Filer, duly registered to provide portfolio management and advisory services in the jurisdiction where the Client is resident, will be present at all times, either in person or by telephone;



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12. a Sub-Adviser that provides portfolio management and advisory services to the Filer for the benefit of its Clients would be considered to be acting as an “adviser” under the securities legislation of the Jurisdiction, and in the absence of registration relief or an existing exemption, would be subject to the adviser registration requirement.

### **Decision**

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.
- ¶ 5 The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:
  1. the obligations of each Sub-Adviser are set out in a written agreement between the Sub-Adviser and the Filer;
  2. the Filer contractually agree with each Client on whose behalf Services are to be provided by a Sub-Adviser, to be responsible for any loss that arises out of the failure of the Sub-Adviser:
    - (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Filer and the Client(s) for whose benefit the Services are to be provided;
    - (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances;
  3. the Filer is not relieved by its Clients from its responsibility for loss under paragraph 2 above;
  4. each Sub-Adviser that is not resident in Canada 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; and
  5. the Filer is registered as an investment counsel/portfolio manager in the jurisdiction in which this decision will be applied.

Sandra Jakab  
Director, Capital Markets Regulation  
British Columbia Securities Commission