



Citation: 2013 BCSECCOM 358

September 26, 2013

Headnote

Securities Act s. 48, 76 Other – Exemption from registration and prospectus requirements for situations other than a corporate acquisition or reorganization; trades to business associates; debt settlements; or trades involving employee investment plans and consultants – A person wants relief from certain trades made by a person in a security of a mutual fund to an employee savings plan or a participant in an employee savings plan – The person complies with BCI 45-524 *Registration and Prospectus Exemption for Certain Capital Accumulation Plans* (CAP exemption) except that it is not a “tax assisted” plan as required by the definition of “capital accumulation plan” in the CAP exemption

Securities Act s. 48 Investment Fund Manager – Exemption from s.34(c) requirement to be registered as an investment fund manager – A person wants relief from the requirement to register as an investment fund manager in BC – The person complies with the exemption from the requirement to register as an investment fund manager under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (IFM CAP exemption) except that the savings plan is not a “tax assisted” plan as required by the definition of “capital accumulation plan” in the IFM CAP exemption

Securities Act s. 171 – Revoke or vary decision – A person wants to revoke and replace a previous order it received to revise the representations or conditions to the relief granted – The person previously obtained relief from certain requirements in securities legislation – The policy reasons for granting that relief have not changed, but the sunset provision in the relief is no longer appropriate because there is no foreseeable change to the existing rules

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 34(a), 48, 61 and 76

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

Securities Act, R.S.B.C. 1996, c. 418, s. 171

Exemption Order

Vancouver Employees’ Savings Plan

Sections 48, 76 and 171 of the Securities Act, R.S.B.C. 1996, c.418



Background

- ¶ 1 The Nominees (the Nominees) of the Vancouver Employee Savings' Plan (VESP) were granted relief on September 28, 2010 (the 2010 Order) from
- a) the requirements to be registered to trade and to file and obtain receipts for a preliminary prospectus and prospectus in sections 34(a) and 61 of the Act for trades and distributions of mutual fund securities by a person to VESP or to a member of VESP as part of the member's participation in VESP (the Trade Relief) and
 - b) the requirement to be registered as an investment fund manager in section 34(c) of the Act in connection with the Nominees' administration of VESP (the Investment Fund Manager Registration Relief).

The 2010 Order terminates on September 28, 2013.

The Nominees have applied for an order

- a) to revoke the 2010 Order and
- b) to obtain the Trade Relief and the Investment Fund Manager Registration Relief on the same terms as the 2010 Order but without a termination date.

Representations

- ¶ 2 The Nominees, on behalf of VESP, represent that:
- 1. VESP is a non-registered savings plan that was established by the City of Vancouver (the City) for certain of its employees;
 - 2. the purpose of the establishment of VESP was to provide employees an additional benefit as part of their compensation package and to encourage employees to have savings;
 - 3. since its establishment in 1951, other employer groups joined VESP and currently, the employers who have employees participating in VESP consist of the City; Vancouver School Board (the School Board); Canadian Union of Public Employees Local 15- Vancouver Municipal Education and Community Workers (the Union); Britannia Community Services Centre Society; Vancouver Police Board; Vancouver Public Library; Emily Carr University of Art & Design; H.R. McMillan Space Centre; Langara College; Little Mountain Residential Care and Housing Society; Ray-Cam Cooperative Association; Vancouver Maritime Museum and Vancouver Museum Commission (collectively referred to as the Employer Groups);



4. VESP is governed by the provisions of a trust agreement, made as of June 15, 2007 (the Trust Agreement), among the City, the School Board, the Union, Canadian Western Trust, acting as trustee (CWT) and the Nominees;
5. the Nominees are comprised of individuals employed by the City, School Board, and the Union with powers and duties under the Trust Agreement related to the administration of VESP, including ensuring compliance with the Act;
6. only employees of the various Employer Groups participate in VESP and the participation of the employees are largely as a result of the terms of collective bargaining agreements negotiated between unions representing the employees and the Employer Groups; all employees are also members of the B.C Municipal Pension Plan; persons who cease employment with one of the Employer Groups may elect to keep funds in VESP but former employees do not make any new contributions to VESP;
7. under VESP, employees of the various Employer Groups contribute certain percentage of their wages and the employee contributions would be matched, to varying amounts, by the Employer Groups; the contributions are established largely through the collective bargaining agreements negotiated between unions representing the employees and the Employer Groups;
8. the contributions of the employees and the Employer Groups are invested in various investment funds set up by VESP; an employee participating in VESP may select from four investment funds they want their monies allocated to and in what proportions; participants give direct instructions to an administrator retained by the Nominees who then instruct CWT on aggregate allocations to each of the investment options;
9. VESP meets the definition of “capital accumulation plan” under BC Instrument 45-524 *Registration and Prospectus Exemption for Certain Capital Accumulation Plans* (BCI 45-524) and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) except that VESP is not a “tax assisted” savings plan;
10. participants in VESP are provided with the information required by section 2.1 of BCI 45-524 which includes investment information, investment tools and expense and fee information relating to VESP and VESP operates in compliance with all the requirements of BCI 45-524, notwithstanding that it is not a “tax assisted” plan; and
11. under the Trust Agreement, the Nominees have powers and duties relating to the administration of the VESP and the various investment funds set up by VESP, and are



accordingly directing the affairs of an investment fund, which requires registration as an investment fund manager under NI 31-103.

Order

¶ 3 Considering that it is not prejudicial to the public interest, the Executive Director orders that:

1. the Trade Relief is granted under section 48 and 76 of the Act, provided that the trade and/or the distribution satisfies the conditions in sections 2.1 and 2.2 of BCI 45-524 for the trade and/or distribution to be exempt, except for the requirement that the subject investment or savings plan be “tax assisted” as required by the definition of “capital accumulation plan” in BCI 45-524;
2. the Investment Fund Manager Registration Relief is granted under section 48 of the Act, provided that each Nominee satisfies the conditions in section 8.28(2) of NI 31-103, except for the requirement that the subject investment or savings plan be “tax assisted” as required by the definition of “capital accumulation plan” in section 8.28(1) in NI 31-103; and
3. the 2010 Order is revoked under section 171 of the Act.

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